Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Comprehensive Review of Universal Service Fund Management, Administration, and Oversight	)	WC Docket No. 05-195
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

REPLY COMMENTS OF THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

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EXECUTIVE SUMMARY

Dozens of parties representing all universal service stakeholders submitted initial comments in this proceeding. The comments differ widely on certain issues, but consensus emerged on many key matters concerning administration and management of the Universal Service Fund (USF), including the following:

Wholesale Changes to USF Administration. The vast majority of commenters caution against wholesale changes to the current USF administrative framework. Echoing considerations raised by the Universal Service Administrative Company (USAC) in its Comments, parties cite disruption to the programs, increased administrative and compliance costs, and loss of expertise as potential consequences of replacing the administrator, subjecting the choice of administrator to competitive bidding, or substituting the current flexible relationship between USAC and the Federal Communications Commission (FCC or Commission) with a rigid government contracting model.

Commenters agree, however, that USAC and the Commission should take steps to improve USF management and administration. For example, several parties recommend changes to the composition of USAC's Board of Directors, arguing for increased representation of certain stakeholder groups. Some parties also seek more input into USF administration by establishing advisory committees or informal working groups. While decisions regarding policy matters such as the composition of the Board are entrusted to the Commission, USAC welcomes increased stakeholder participation in USF administrative issues.

Contribution Factor Announcement Period. Several parties ask the Commission to announce the USF contribution factor 30 days before the start of each quarter rather than the current 14 days. Anticipating this request, USAC offered in its Comments two potential administrative solutions: the Commission could mandate electronic filing of the quarterly FCC Form 499-Q or require reporting entities to file FCC Form 499-Q 15 days earlier—*i.e.*, 45 days before the start of the quarter.

Red Light Rule. Several parties comment on administration by USAC and the Commission of the "Red Light Rule," which prohibits USF or other disbursements to an entity while that entity has an outstanding financial obligation to the Commission or USAC. If an entity has an outstanding USF obligation, the rule contemplates offsetting the delinquency against any USF disbursements due the entity. USAC's error rate in administering the Red Light Rule is low, and USAC continues to reduce that rate. USAC nonetheless could readily implement a *de minimis* threshold as at least one commenter suggests. Such a threshold would be administratively efficient for both USAC and the billed entity.

USF Investments. Commenting parties agree with USAC that USF investments should not be restricted to non-interest bearing securities. Today, USAC invests only in United States Treasury securities, and its investments have safely earned more than $500 million since 1998. Requiring collected funds to sit idle pending distribution would needlessly increase the burden on contributors.

USAC Procedures. Although the question of codifying or otherwise specifying USAC's administrative procedures generated diverse comments, overall parties argue for more transparency in USF administration, better communication with program participants, and more timely and transparent guidance from the Commission. USAC agrees it should share more information with contributors, applicants, and beneficiaries regarding program requirements. USAC's newly redesigned website will begin to address commenters' requests that USAC publish all relevant procedures in one place. Parties, however, differ on the extent to which formal codification of all USAC procedures is necessary or desirable. Most of USAC's "administrative procedures" are detailed operating processes designed to achieve administrative efficiency and compliance with the Commission's rules. USAC continues to believe, and many commenters agree, that codification of all USF operating procedures would unnecessarily restrict USAC's ability to administer the programs, and the Commission's ability to oversee them, in a flexible and responsive manner. Moreover, many detailed procedures must remain confidential in order to protect program integrity.

Performance Measures. Commenters generally agree that USF program performance and administration need to be measured accurately in order to assess the effectiveness of the programs. USAC proposed various methods for conducting such measurements in its Comments and, taking into account the numerous additional suggestions offered by other commenters, intends to work closely with the Commission to establish and implement appropriate performance measures as soon as possible.

Commenters suggested numerous ways to improve program management, including the following:

Multi-Year Application Process. In the Schools and Libraries program, the overwhelming majority of commenters agree with the Commission's tentative decision to establish a multi-year application process but differ as to the details. Assuming issues created by application of the federal Antideficiency Act to the USF are appropriately addressed, USAC supports a two-year application cycle for priority one (telecommunications and internet access) services. USAC also suggests a two-year application cycle for priority two services based on multi-year contracts. As with the Schools and Libraries program, commenters urge the Commission to adopt a multi-year application process for Rural Health Care program participants. USAC suggests a two-year cycle for this program as well. Two-year cycles would ease the burden on applicants, service providers, and USAC without unduly compromising program integrity or an applicant's ability to implement technological changes.

USF Form Changes. Several commenters advocate creating additional simplified forms, eliminating certain forms, and/or making certain forms optional. USAC's experience suggests that additional forms differentiating among classes of program participants are not necessary. Rather than simplifying matters, optional forms could create considerable confusion for applicants and service providers. Current forms, however, should be streamlined and automated to the fullest extent possible. In addition, USAC already has expanded its outreach activities as called for by numerous parties, and will continue to evaluate its education and communications activities. Similarly, USAC will continue to publish and promote best practices in all the programs and for USF contributors.

Competitive Bidding. Although some commenters urge the Commission to relax or eliminate its competitive bidding rules, in USAC's experience the rules have generally served the program well. Requiring applicants to conduct a full, fair, and open competitive bidding process is a central tenet of the Schools and Libraries program and is critical to USAC's efforts to protect program integrity. Commenters advocate allowing USAC to pay applicants directly, which would eliminate the need for FCC Form 472, the Billed Entity Applicant Reimbursement (BEAR) form. Absent elimination of this form, however, USAC has no choice but to continue the "Good Samaritan" practice of allowing another service provider to step in and remit payment to an applicant when the original service provider cannot or will not do so.

High Cost and Low Income Programs. High Cost program participants seek more detailed information regarding support calculation and disbursements. USAC's plans for developing the more robust information technology systems required in order to provide this data are underway. Companies participating in the Low Income program seek certainty regarding partial month reporting and negative disbursements. USAC favors the adoption of one easy-to-understand method of reporting for all companies, and recommends making monthly filing of FCC Form 497 mandatory. This comports with the practice of the majority of carriers and, in conjunction with close monitoring of projections, will significantly reduce the likelihood of negative disbursements. Other parties agree with USAC that the High Cost and Low Income program disbursement processes should not be combined.

Automation of Processes. The majority of commenters suggest USAC enhance opportunities for electronic transactions in all areas. USAC is currently evaluating a comprehensive strategy to provide more information to program participants and to enhance the automation of its processes and communications with program participants. USAC's information technology plans include a new High Cost and Low Income program payment calculation system as well as an overhaul of USF financial systems to ensure full compliance with federal accounting requirements. These and other administrative efforts must move forward to enable USAC to serve USF participants and the Commission effectively. To the extent USAC has not already considered or is not in the process of implementing other enhancements proposed by commenters, USAC will evaluate the many suggestions put forth and take steps to implement those which are administratively feasible and within the parameters of USAC's comprehensive strategy.

USF Oversight. The Commission received many comments in response to its proposals concerning USF oversight. With respect to beneficiary and contributor audits, regardless of whether the Commission adopts a mandatory independent audit requirement—an approach opposed by virtually all commenters—USAC urges the

Commission not to take any regulatory steps to supplant USAC's audit program. USAC is working with the Commission on a large-scale beneficiary audit program, as contemplated under current rules, and these audits are essential for both the Commission and USAC to ensure that the USF is not subject to waste, fraud, and abuse. USAC and most other commenters do not believe that establishing dollar thresholds for triggering audits would be wise.

* * *

USAC's reply comments address in detail all the issues discussed above, as well as many other administrative matters. USAC is not standing still while the regulatory process runs its course: based in part on the many excellent recommendations received thus far from commenters, as well as initiatives USAC has had underway for some time, USAC is currently working diligently to reduce application and invoice processing time, increase automation, and communicate more effectively with stakeholders. To the extent further administrative changes can be accomplished immediately, USAC will evaluate and implement them. USF stakeholders expect and deserve no less. The thoughtful feedback provided by many interested parties is critical to improving administration of the universal service support programs. USAC welcomes the opportunity to work with the Commission and program stakeholders to implement appropriate modifications to the USF administrative framework.

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I. INTRODUCTION

The Universal Service Administrative Company (USAC) submits these Reply Comments in response to the Commission's invitation in the Notice of Proposed Rulemaking (*NPRM*) in this proceeding.[1] USAC is pleased to respond to the comments of the many Universal Service Fund (USF) stakeholders concerning management, administration, and oversight of the USF and the universal service support programs. Because Commission rules provide USAC "may advocate positions before the Commission and its staff only on administrative matters relating to the universal service support mechanisms,"[2] USAC submits these Reply Comments solely to address the USF administrative issues raised in this proceeding.

In its initial Comments,[3] USAC addressed all aspects of its administrative activities. USAC explained the breadth and depth of its operations in order to enable USF stakeholders to grasp the challenges and complexities of administering the USF. USAC will not repeat the detailed discussion here but will refer to its Comments and the Appendix to the Comments where necessary. USAC will address the issues in the order in which they are presented in the *NPRM* and were discussed in USAC's Comments.

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[1] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors of the National Exchange Carrier Association, Inc*., WC Docket No. 05-195, CC Docket No. 96-45, CC Docket 02-6, WC Docket No. 02-60, WC Docket No. 03-109, CC Docket No. 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 05-124, 70 FR 41658, ¶ 9 (rel. June 14, 2005) (*NPRM*).

[2] 47 C.F.R. § 54.702(d).

[3] *See* Comments of Universal Service Administrative Company (filed Oct. 18, 2005) (USAC Comments).

II. DISCUSSION

A. Management and Administration of the USF

1. Universal Service Fund Administrator

a. Fundamental Restructuring of USF Administration

In the *NPRM*, the Commission sought comment on whether it should replace USAC with another type of administrative structure or entity and whether using a not-for-profit corporation as the permanent Administrator of the USF has worked successfully.[4] USAC's initial Comments identified numerous administrative issues to be considered in assessing whether to fundamentally restructure the USF administrative framework, including the Commission's ability to maintain the close oversight and control it currently exercises over USAC, ensuring streamlined decision-making, and limiting disruption and loss of expertise in any transition to a different administrator.[5]

Commenting parties identified similar issues and the vast majority of commenters from all USF stakeholder sectors advocated retaining USAC as Administrator.[6] Verizon,

[4] *See NPRM*, ¶¶ 12-13.

[5] *See* USAC Comments at 45-49.

[6] *See* Comments of Alexicon Telecommunications Consulting at 5 (Alexicon Comments); Comments of the American Association of School Administrators & Association of Educational Service Agencies at 4 (AASA/AESA Comments); Comments of the American Library Association in Response to Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking at 31 (ALA Comments); Comments of CenturyTel, Inc. at 2 (CenturyTel Comments); Comments of the Chicago Public Schools in Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking at 3-4 (CPS Comments); Comments of the Education and Library Networks Coalition at 4 (EdLinc Comments); Comments of the Council of the Great City Schools at 3 (Great City Schools Comments); Comments of IDT Telecom, Inc. at 2 (IDT Comments); Kellogg & Sovereign Consulting, LLC, Initial Comments, FCC Further Notice of Proposed Rulemaking FCC 05-124 at 2 (Kellogg & Sovereign Comments); Comments of the NEILSA e-rate Consortia at 3 (NEILSA Comments); National Telecommunications Cooperative Association Initial Comments at 2 (NTCA Comments); Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, Comments by the New York City Department of Education at 2 (NYCDOE Comments); Private School Technology Coalition Comments at 2 (PSTC Comments); Comments of Qwest

for example, states "[c]ertainly, improvements can be made in the administration of the program. However, it is unclear whether bringing in another party, which would have no experience with the program and would have to recreate all of the resources USAC already has invested, would cost more time, effort, and expense than it would save."[7] SBC concurred, adding although "review of USF management and administration is appropriate, SBC does not believe a radical overhaul or replacement of USAC, as the program administrator, is necessary."[8] SBC concluded "drastically changing the administrative structure of USF would be extremely disruptive to the industry and the USF programs."[9]

Schools and Libraries program stakeholders agree. EdLinc states "[b]y changing the permanent Administrator of the Schools and Libraries program, a collective history of a program could be lost. Also the cost of transferring the program to another administrator would be substantial."[10] The Chicago Public Schools argues:

Communications International Inc. at 8 (Qwest Comments); Comments of SBC Communications Inc. at 3-4 (SBC Comments); Initial Comments of the State E-Rate Coordinators Alliance in Response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking at 4-5 (SECA Comments); Comments of Verizon at 30 (Verizon Comments); Initial Comments from Greg Weisiger at 9 (Weisiger Comments); Comments of the West Virginia Department of Education, Office of Technology and Information Systems at 2 (WVDE Comments); Comments from the Wisconsin Department of Public Instruction at 3 (Wisconsin Dep't of Public Instruction Comments).

[7] Verizon Comments at 30 (citation omitted).

[8] SBC Comments at 2.

[9] *Id.*; *see also* Qwest Comments at 8 ("USAC is the appropriate entity to continue to serve as Administrator. There is no significant public interest benefit in seeking competitive bids to replace USAC with another entity. Such a process would take too long to set up and would lead to a lack of predictability in the administration of the USF. Moreover, USAC already has substantial experience with administering the USF and has displayed substantial improvement in its capabilities over time.").

[10] *See* EdLinc Comments at 4; *see also* AASA/AESA Comments at 4; NYCDOE Comments at 2; WVDE Comments at 2.

> transition to a new Administrator could introduce significant disruptions to the program. These disruptions could include additional funding delays, a need for new rule changes, a completed redesign of the back-end computer systems to run the program, and other instabilities. Given the problems that have resulted from instability in the past, FCC should avoid introducing further instability into the program unless absolutely necessary. We therefore believe that the administration of the program should remain with USAC.[11]

While Sprint Nextel recommends periodic assessment of other entities to administer the USF through a competitive bidding process,[12] other commenters reject a competitive bidding approach. SBC, for example, stated:

> replacing the USAC with a new administrator selected by competitive bid for a limited term would require funding recipients across the country to expend resources to implement procedures to develop and maintain contacts with each new administrator, and to ensure compliance with any administrative policies or rules established by that administrator. Additionally, appointing an administrator by competitive bid could encourage the new administrator to focus on cutting costs, at the expense of effective program implementation, to increase its profits from administering the USF program.[13]

The Chicago Public Schools echoed this concern, stating "a competitive bidding procedure would likely focus on cost efficiency as a primary criterion for selection."[14]

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[11] CPS Comments at 3.

[12] *See* Comments of Sprint Nextel Corporation at 2-4 (Sprint Nextel Comments). Sprint Nextel states the incumbent administrator should be allowed to participate in any competitive bidding process. *Id.* at 3-4.

[13] SBC Comments at 4; *see also* SECA Comments at 4-5 ("[s]ubjecting program administration to periodic competitive bids would lend a dangerous instability factor to program processes and operations. The current Administrator's experience and expertise acquired over the last eight years provides substantial value and knowledge that would be lost if the FCC decided to change administrators or change the manner in which the administrator is selected for the USF programs.").

[14] CPS Comments at 4.

As detailed in USAC's Comments, USAC's administrative costs as a percentage of the USF are low and compare favorably to entities administering analogous programs.[15]

b. Proposed Memorandum of Understanding

In the *NPRM,* the Commission asked whether it should retain USAC as Administrator pursuant to a memorandum of understanding between the Commission and USAC.[16] USAC commented that in light of the unique nature of USAC's relationship with the Commission, creation of a memorandum of understanding seems appropriate at this time, and USAC welcomes the opportunity to work with the Commission to craft such a memorandum.[17] Qwest agrees, stating "[a] contract or MOU would provide a mechanism by which the Commission could clearly delineate the role USAC is to play and make more concrete its procedures for overseeing USAC."[18] Similarly, the Commission's Office of Inspector General (OIG) states "[w]e believe it would benefit the program if the relationship between USAC and the Commission were better defined, perhaps in the form of a contractual arrangement."[19]

c. USAC's Board of Directors

Numerous parties propose revisions to the USAC Board of Directors to reflect changes in the marketplace and the USF stakeholder community. Wireless service

[15] *See* USAC Comments at 34-36.

[16] *See NPRM,* ¶ 12.

[17] *See* USAC Comments at 49-50. As stated in USAC's Comments, any such agreement would more clearly define the parameters of USAC's relationship with the Commission but would not be a typical government contract based on the Federal Acquisition Regulation.

[18] Qwest Comments at 9.

[19] Comments of the Federal Communications Commission (FCC) Office of Inspector General (OIG) at 2 (FCC OIG Comments).

providers, for example, argue that USAC's Board should reflect the increased role of the wireless industry in USF contributions and support.[20] Entities representing the schools community similarly seek additional applicant representation on the USAC Board.[21] The composition of USAC's Board of Directors was the product of extensive Commission proceedings that included comment from all USF stakeholders, but the Commission may view reassessment of its composition to be desirable as a policy matter due to the passage of time and changes in the marketplace.[22] In addition, the recommendations of some commenters to create advisory groups representing different USF stakeholders warrant consideration.[23] USAC has periodically convened stakeholders to address programmatic issues and would welcome input on a regular basis.

The Commission sought comment on whether the USAC Board of Directors should be permitted to enter into closed sessions in which Commission staff and members of the public are excluded.[24] In its Comments, USAC noted that its Board of

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[20] *See, e.g.,* Comments of Centennial Communications Corporation on the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking at 9-10 (Centennial Comments); Comments of CTIA – The Wireless Association at 2 (CTIA Comments); Comments of Dobson Cellular Systems, Inc. and American Cellular Corporation at 4-6 (Dobson Cellular Comments).

[21] *See, e.g.*, Great City Schools Comments at 3 (proposing the education representatives on the USAC Board include at least one local program administrator); Comments of the Los Angeles Unified School District at 1-2 (LAUSD Comments) (Board should include a minimum of two school district members representing a large and small school district); NYCDOE Comments at 3 (requesting one Board member come from a large city school system). Both LAUSD and the Council of Great City Schools suggest that USAC Board meetings be held in different locations throughout the country to encourage broader participation by schools. *See* Great City Schools Comments at 3; LAUSD Comments at 2.

[22] *See* USAC Comments at 4-11, 53.

[23] *See, e.g.,* AASA/AESA Comments at 3; Comments of the International Society for Technology in Education and the Consortium for School Networking on the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (FCC 05-124) at 26-27 (ISTE/CoSN Comments); Comments of the National Exchange Carrier Association, Inc. at 16 (NECA Comments); NEILSA Comments at 3; Qwest Comments at 23; SECA Comments at 8; Wisconsin Dep't of Public Instruction Comments at 3.

[24] *See NPRM*, ¶ 16.

Directors adheres to specific and detailed criteria and procedures regarding when closed sessions are appropriate, and the question of who should be allowed to attend closed sessions is a matter appropriately left to the USAC Board of Directors on a case-by-case basis in accordance with Board members' fiduciary duties.[25] The Chicago Public Schools agrees "closed meetings of the USAC board or subcommittees of the USAC board should be permitted under certain circumstances," but states "the Commission should assign an observer to these meetings to determine whether the opportunity for closed meetings is being abused, and take appropriate corrective measures if necessary."[26]

In general, unless the issue relates to a matter involving USAC's relationship with the Commission upon which the advice of counsel has been sought, Commission staff has attended closed sessions of the Board and its committees. Because USAC is not a government entity, however, there may be situations in which it is appropriate for only directors and officers, or directors only, or even a subset of directors, to participate in discussion of certain issues. These are typically matters of corporate governance or sensitive personnel issues that are properly left to the discretion of the USAC Board of Directors on a case-by-case basis in accordance with its fiduciary duties and the detailed standards for entering into closed sessions, which were discussed in USAC's Comments.[27]

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[25] *See* USAC Comments at 54-56.

[26] CPS Comments at 5-6.

[27] *See* USAC Comments at 54-56.

d. USAC's Procurement Practices

In response to the Commission's questions regarding whether USAC should apply, to the extent practicable, the policies and procedures embodied in the Federal Acquisition Regulation (FAR), Chapter 1 of Title 48 of the Code of Federal Regulations, in connection with USAC's procurement of goods and services,[28] USAC explained in its Comments that it has at all times conducted its procurement activities using sound business practices and subject to audit and extensive oversight.[29] Indeed, USAC's procurement activity tracks the FAR in many respects and, to USAC's knowledge, there have been no allegations against USAC of imprudent contracting activities.[30] As Verizon notes, "[t]he Commission should not require the administrator to navigate and comply with a new set of complex rules which are not demonstrated as being necessary to properly administer the universal service fund."[31] In addition, as stated in its Comments, USAC is hopeful that certain procurement-related procedural statements by Commission staff, including a letter directive that staff review and approve any sole source solicitations and contract awards in excess of $25,000 and all competitive contracting actions in excess of $250,000, will be revisited in this proceeding and/or as part of a discussion concerning a potential memorandum of understanding.[32] Addressing this

[28] *NPRM*, ¶ 12.

[29] *See* USAC Comments at 62-64.

[30] *See id.*

[31] Verizon Comments at 31. Alexicon, by contrast, states without explanation that the FAR should be applied to USAC. *See* Alexicon Comments at 6.

[32] *See* USAC Comments at 62-64.

issue appropriately will enhance Commission oversight while enabling USAC to implement new systems to serve USF stakeholders in a more efficient manner.

e. Reporting Requirements and Contribution Factor Timing

Under current rules, USAC makes two quarterly USF filings: the USF demand filing 60 days prior to the start of each quarter; and the USF contribution base filing 30 days prior to the start of each quarter.[33] The Commission uses these filings to calculate the quarterly contribution factor, which it announces 14 days before the start of each quarter.[34] As anticipated in USAC's Comments,[35] several parties ask the Commission to change the rules so that the quarterly contribution factor would be announced 30 days, rather than 14 days, before the beginning of each quarter.[36] These commenters explain the 14 day advance notice of the contribution factor does not give companies passing USF costs through to their end-user customers adequate time to provide notice of billing changes, either through the filing of revised tariffs, advance notifications, or changes to customer billing statements. The commenters recognize, however, in order for the Commission to announce the contribution factor 30 days before the beginning of the quarter, USAC would need to submit the USF contribution base filing 15 days earlier, *i.e.*, 45 days before the beginning of each quarter rather than the current 30 days.

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[33] 47 C.F.R. § 54.709(a)(3); *see NPRM*, ¶¶ 17-18.

[34] *Id*.

[35] *See* USAC Comments at 67.

[36] *See* Dobson Cellular Comments at 8-9; Qwest Comments at 13-14, 33; Verizon Comments at 26-27.

USAC could submit the USF contribution base filing 15 days earlier provided the Commission either mandates electronic filing and electronic certification of FCC Form 499-Q[37] or changes the due dates for FCC Form 499 revenue filings on which the USF contribution base filing is determined to be 15 days earlier than currently required.[38] FCC Form 499-Q filings are due on the first business day of August, November, February, and May, thus giving USAC approximately 30 days to review for data integrity, enter the data, and compile the USF contribution base filings (due at the beginning of September, December, March, and June). Because most FCC Form 499-Qs are filed on paper, verifying and entering data are labor and time intensive processes. Mandating electronic filing of FCC Form 499-Q would avoid unnecessary data entry and permit USAC to verify and process data more efficiently. For this reason, mandatory electronic filing would enable USAC to file the USF contribution filing earlier without a corresponding need to change FCC Form 499 filing dates.

Notably, if the Commission declines to mandate electronic filing and certification of FCC Form 499-Q, the FCC Form 499-A[39] filing date would need to change in addition to the FCC Form 499-Q filing date. This is because USAC needs at least 30 days between FCC Form 499 filings to ensure timely processing of the large amount of data received in paper filings. Under the current filing schedule, FCC Form 499-As are due

[37] *See* Telecommunications Report Worksheet, Quarterly Filing for Universal Service Contributors, OMB 3060-0855, April 2003 (FCC Form 499-Q) (form for reporting quarterly revenue).

[38] *See* USAC Comments at 67.

[39] *See* Telecommunications Reporting Worksheet, Annual Filing, OMB 3060-0855, April 2005 (FCC Form 499-A).

the first business day of April each year and the May FCC Form 499-Q is due on the first business day of May each year thus providing 30 days to process FCC Form 499-As before the May FCC Form 499-Q filing deadline. Therefore, if the Commission changes the FCC Form 499-Q filing dates to be 15 days earlier—to April 15 each year in the case of the May filing—then the FCC Form 499-A filing date should also be moved 15 days earlier to March 15. This will give USAC the necessary time to complete processing of FCC Form 499-A before receiving the May FCC Form 499-Q.

With respect to possible modification of the content of USAC's quarterly filings, only one commenter[40] responded by noting that tracking and monitoring the content of the appendices to USAC's quarterly filings[41] is difficult because the subjects addressed in the appendices are not assigned the same appendix number from quarter-to-quarter. USAC will consider whether an alternative numbering scheme for the appendices to its quarterly filings would be manageable and more usable for stakeholders.

f. Contributor Delinquency

(i) Partial Payments

USAC supports recognition of its practice of applying partial payments of USF obligations to the oldest debt first although formal codification of this administrative practice does not appear to be necessary. Among other things, this practice reduces administrative costs by resulting in fewer transfers of delinquent debt to the Commission

[40] *See* Qwest Comments at 14.

[41] There is a single shared set of appendices for the USF demand and USF contribution base quarterly filings. These are currently available at: http://www.universalservice.org/overview/filings/.

pursuant to the Debt Collection Improvement Act.[42] The only commenter addressing this issue likewise supports this practice, noting that this payment application method "[functions well and] is a fairly standard business practice for both private and public agencies."[43]

(ii) Interest and Penalties for Failure to File FCC Form 499

Current rules provide for USAC to assess individual contributors for "reasonable costs incurred" as a result of a contributor's failure to file a truthful or accurate FCC Form 499, failure to timely file FCC Form 499, or failure to timely pay universal service obligations.[44] Thus, USAC currently assesses late filing and late payment fees but *not* interest or penalties. USAC would welcome more specific rules concerning appropriate fees and/or interest and penalties for delinquent universal service obligations. Whether the rules specify interest and penalties or give USAC authority to establish them itself, clarification of the current "reasonable costs incurred" standard is desirable.

Although no commenters oppose the imposition of interest and penalties for late payment of universal service obligations,[45] commenters make a number of suggestions. USAC will address several of the administrative implications of the following proposals:

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[42] Debt Collection Improvement Act of 1996 (104 Pub. L. 134, 110 Stat. 1321); *see* USAC Comments at 71-72; *NPRM*, ¶ 19.

[43] *See* Alexicon Comments at 8.

[44] *See* 47 C.F.R. § 54.713; *see also* USAC Comments at 70; *NPRM*, ¶ 19.

[45] *See* Alexicon Comments at 8; Comments of BellSouth at 11 (BellSouth Comments); NTCA Comments at 9-11; Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies and the Western Telecommunications Alliance at 16-17 (OPASTCO/WTA Comments); Qwest Comments at 14-15.

- The Commission, not USAC, should set applicable penalties and interest.[46]

- USAC should be permitted to impose progressive penalties using Commission Enforcement Bureau guidelines.[47]

- If USAC is permitted to charge interest on underpayments, USAC should be required to pay interest on overpayments.[48]

- USAC should be permitted to assess interest retroactively with respect to contribution obligations that should have been previously assessed.[49]

- Penalties and interest should not be assessed until after a grace period or after providing notice and an opportunity to explain or cure the delinquency.[50]

- Unpaid universal service obligations that are disputed should be collected by USAC and placed in escrow until the dispute is resolved;[51] however, no late fees or penalties should be assessed on amounts that are successfully contested.[52]

Qwest argues that only if the Commission specifically defines a penalty and interest scheme through its rules can USAC be limited to a purely administrative role.[53] Although specifying the amounts and conditions under which contributors would be required to remit penalties and interest to USAC for late or non-payment of USF obligations could provide additional clarity, USAC is acting in a purely administrative role today. USAC exercises extremely limited discretion in assessing late filing or late

[46] Qwest Comments at 14-15.

[47] NTCA Comments at 9.

[48] Qwest Comments at 15 n.40.

[49] NTCA Comments at 9-11.

[50] BellSouth Comments at 11; OPASTCO/WTA Comments at 16-17.

[51] Alexicon Comments at 8.

[52] IDT Comments at 5.

[53] Qwest Comments at 14-15.

payment fees—for example USAC may reverse such fees only in cases where they were incurred as a result of an error by USAC. Thus, contributors seeking forgiveness of fees due to their own errors or financial hardship must seek a waiver from the Commission. If the Commission were to conclude that USAC should exercise greater discretion to take actions such as imposing graduated penalties or waiving interest or penalties under certain circumstances, then the Commission could clearly define standards and guidelines that could provide boundaries around the exercise of such discretion.

Currently, when contributors report increased revenue from prior years or make prior year revenue filings for the first time, increased obligations associated with these filings appear on current bills. The rules do not require or necessarily permit USAC to retroactively assess late payment fees as if the increased obligations had been billed (and remained unpaid) at the time the underlying obligations arguably accrued. The "penalty" imposed by the Commission for such filings is the calculation of the revised obligations using an average of the two highest contribution factors for the year in which the obligations would have been billed.[54] The Commission also may impose forfeitures or other penalties in situations where it deems appropriate. USAC billing systems could be modified to support retroactive assessment of late payment fees (or interest should the

[54] *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972, ¶ 36 (2002) (*Interim Contribution Methodology Order*).

Commission require). Moreover, if the Commission adopts an interest formula for unpaid USF obligations, retroactive application of interest could raise issues concerning the appropriate treatment of overpayments into the USF.

USAC provides notice between 15 and 30 days after the missed due date to all contributors required to file FCC Form 499 that fail to do so. As an administrative matter, USAC opposes a grace period before the imposition of late filing fees for untimely FCC Form 499 filings. The information in FCC Form 499-Q filings is particularly critical to USAC's ability to submit its own quarterly USF contribution base filing with the FCC consistent with the requirements of 47 C.F.R. § 54.709(a)(3). It is likely that a grace period would become the *de facto* due date for the form and thus undermine the timely filing of accurate quarterly USF contribution base filings.

USAC's billing statements notify delinquent contributors well in advance of the imposition of late payment fees, thus providing the opportunity to cure or dispute the delinquency. Contributor obligations are calculated generally on the 15th of each month (or, when the 15th is a weekend or holiday, on the first business day prior), invoices are mailed on or about the 22nd of each month, and invoices are payable by the 15th of the following month. Contributors thus have approximately 20 days to notify USAC of a billing error or otherwise contest a billed obligation before late fees are assessed. In addition, USAC sends electronic delinquency notices within two business days of a missed payment due date. Late payment fees associated with a missed payment are reflected on the invoice following the month in which a payment was due.

Creating an escrow mechanism for disputed funds as one commenter suggests,[55] would add significant administrative costs. However, USAC could implement such a requirement if directed to do so by the Commission. USAC does not require payment of late fees in situations where contributors are successful in disputing the obligation on which those late fees are based.

(iii)Red Light Rule

Although the Commission in the *NPRM* did not specifically solicit comments on application of the "Red Light Rule" to USF obligations,[56] several commenters addressed specific concerns regarding the applicable processes used by USAC and the Commission.[57] In March 2004, the Commission directed USAC (and the administrators of the other Commission reporting components)[58] to establish procedures to implement the Commission's revised Debt Collection Improvement Act rules, including what is commonly referred to as the Red Light Rule. USAC worked with Commission staff to develop these procedures and, in advance of the effective date, provided an implementation plan to the Commission for review. Also in advance of the effective date, USAC posted Red Light Rule information on its website and notified the

[55] *See* Alexicon Comments at 8. Alexicon does not explain why it believes disputed amounts should be placed in escrow.

[56] *See* 47 C. F. R. Part 1, Subpart O; *see also Amendment of Parts 0 and 1 of the Commission's Rules, Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Request for Benefits by Delinquent Debtors*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540 (2004) (*Red Light Rule Order*).

[57] *See* CenturyTel Comments at 2-6; Qwest Comments at 11, 15; SBC Comments at 4-5; Sprint Nextel Comments at 4-5; Comments of the United States Telecom Association at 7-8 (USTA Comments). USAC described its Red Light Rule process in Appendix A of its Comments. *See* USAC Comments, Appendix A at 14-15.

[58] Other reporting components include the Telecommunications Relay Fund, North American Numbering Plan, and Local Number Portability. *See* 47 C.F.R. §§ 1.1901(b), (p).

contributor and service provider community of the implications of the new procedures through mailings and electronic notifications. USAC implemented Red Light Rule procedures applicable to delinquent USF obligations and program funding commitment adjustments beginning November 1, 2004.

Any delinquent debt owed to the Commission, or USF contributions or commitment adjustments owed to USAC, triggers application of a "red light" to all entities with FCC registration numbers that share a federal taxpayer identification number. For entities with USF debts that receive USF disbursements, a red light requires USAC to offset delinquencies against pending USF disbursements. For entities with delinquent Commission debt, once the Commission notifies USAC of the red light status, USAC is required to hold pending USF disbursements until the Commission notifies USAC that the red light has been cleared.[59]

Some parties contend that USAC commits a significant number of errors in Red Light Rule administration. While USAC understands that any errors are disruptive to its customers, USAC statistics reflect that its error rate is low, averaging 0.11% of total payments processed from January 2005 to October 2005.[60] The rolling four-month average red light error rate through October 2005 is 0.04%. USAC works diligently with customers to quickly correct errors that do occur. Nevertheless, mistakes could be minimized by providing a longer time period to dispute red lights triggered by delinquent

[59] *See Red Light Rule Order*, 19 FCC Rcd at 6541, ¶ 4 (requiring withholding of action with respect to "applications or other requests for benefits by delinquent debtors . . . if payment [or satisfactory arrangement for payment] of the delinquent debt is not made"); *see also* 47 C.F.R. § 1.1901(d) (defining "application" to include "any request, as for assistance, relief . . . or decision").

[60] Calculated as the number of payments held or offset due to a USAC error as a percentage of total payments processed.

debts owed to USAC.[61] In addition, as one commenter proposes, setting a *de minimis* or materiality threshold for the amount of debt that can trigger a red light could improve administrative efficiency by avoiding situations where the cost of imposing a red light exceeds the amount of the delinquency that triggered it.[62] USAC could quickly implement such a threshold, as well as a "yellow light" or grace period after a delinquency occurs, should the Commission direct it to do so.

(iv) Providing Additional Detail on USF Contributor Invoices

Several commenters suggest USAC could reduce confusion by providing more detail on contributor invoices, particularly with respect to reflecting how the quarterly contribution factor is used to calculate obligations and how annual true-ups are calculated.[63] While USF invoices currently provide considerable detail concerning both monthly and annual calculations, USAC is continuing to develop enhancements that will make USF invoices clearer and more informative. Currently, all monthly invoices are accompanied by a supporting worksheet reflecting the applicable contribution factor, the contributor's reported revenue base, and the calculations used to derive the monthly obligation. In addition, each July, USAC provides a supplemental worksheet detailing the calculations from which annual true-up adjustments or credits are derived.

USAC does not presently provide a similar worksheet reflecting how adjustments or credits associated with the filing of late or revised FCC Form 499-As are calculated.

[61] CenturyTel Comments at 2-6; Qwest Comments at 11, 15; SBC Comments at 4-5; USTA Comments at 7-8.

[62] CenturyTel Comments at 5-6.

[63] CTIA Comments at 6; Dobson Cellular Comments at 6-7; Qwest Comments at 33-34.

USAC is assessing billing system enhancements that would provide such detail. Adjustments or credits associated with a revised FCC Form 499-A currently appear as a separate line item on the invoice and the calculation details are available by contacting USAC customer service. Because only 9.65% of contributors submit FCC Form 499-A revisions,[64] adding another level of detail to contributor invoices to address form revisions must be balanced against the need for other billing system enhancements.

g. Borrowing Funds

Commission regulations currently provide that USAC "shall request authority from the Commission to borrow funds commercially" if contributions received in a given quarter are inadequate to meet the amount of universal service program payments and administrative costs for that quarter.[65] In its Comments, USAC noted it has never requested such authority and the current method of establishing the universal service contribution requirement makes eliminating USAC's borrowing authority a matter of limited concern.[66] Because the USF funding mechanism may change, however, elimination of the rule could remove a potential safety valve in the event timing or other rules are amended.[67] OPASTCO and WTA agree that "[w]hile the need to request borrowing authority is unlikely, USAC should have this ability at its disposal in order to keep support flowing to recipients in the event of unforeseen circumstances."[68] Kellogg

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[64] USAC Comments, Appendix A at 6-7.

[65] 47 C.F.R. § 54.709(c); *see NPRM*, ¶¶ 20-21.

[66] *See* USAC Comments at 72-73.

[67] *See id.*

[68] OPASTCO/WTA Comments at 16.

& Sovereign Consulting, in contrast, contend because the USF was "intended to be self-sustaining, borrowing should not be permitted under any circumstances."[69] Given that the Commission must approve on a case-by-case basis any actual borrowing by USAC under current rules, there does not appear to be an immediate need to eliminate USAC's ability to approach the Commission with a borrowing request.

h. Universal Service Fund Investments

As stated in USAC's Comments, the Commission's regulations do not currently contain provisions regarding USF investments.[70] Since December 1999, in accordance with Commission direction, the USF cash balance has been at all times invested in safe, highly liquid government or government-backed securities, including mutual funds that invest solely in government-backed securities. The primary objectives of USAC's investment strategy are safety, liquidity, and yield, in that order—*i.e.*, preservation of principal is the most important consideration. USF investments have earned more than $500 million in interest and dividends since 1998.[71]

The Commission specifically asked in the *NPRM* whether it should restrict USF investments to non-interest bearing accounts or Treasury bills.[72] USAC pointed out the investment of the Fund's cash balance in interest-bearing investment vehicles increases the cash available for supporting the universal service programs and reduces the quarterly

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[69] Kellogg & Sovereign Comments at 3.

[70] *See* USAC Comments at 75; *see also NPRM,* ¶ 21.

[71] *See* USAC Comments at 76.

[72] *See NPRM,* ¶ 21.

contribution factor.[73] Federated Investors, an admittedly interested party, "strongly urges the FCC not to adopt restrictions limiting USAC investments to non-interest bearing accounts or Treasury bills," noting in particular the "history of successful private sector investing" of the USF cash balance.[74] USAC agrees there does not appear to be a basis for restricting USF investments to non-interest bearing instruments.

More broadly, Chicago Public Schools states:

> the Administrator should be able to manage the funds as they see fit, within restrictions. … The Administrator's investment of funds should be audited annually, and as long as those independent audits indicate that the funds are being well managed, the Administrator should have relatively free reign over how to invest the funds. Returns on these investments could also yield funds that could benefit schools and libraries and which may also well offset some of the costs incurred by the Administrator in the running of the program itself. Restrictions on how the funds can be invested and which limit the opportunity to maximize effectiveness should be reconsidered.[75]

USAC has demonstrated it is capable of managing USF investments in a prudent manner. There does not appear to be a basis for restricting its ability to do so. As stated in its Comments,[76] USAC respectfully suggests consideration of a return to the system that worked effectively for several years whereby Commission staff reviews general investment guidelines proposed by USAC and USAC manages the USF cash balance, using professional investment advisors, in accordance with those guidelines. This will

[73] *See* USAC Comments at 77-78. Recent restrictions resulting from application of the Antideficiency Act to USF investments as directed by FCC staff in 2004 have served to limit returns despite the availability of safe securities such as mutual funds comprised entirely of government or government-backed securities.

[74] Letter from Eugene F. Maloney, Executive Vice President & General Counsel, Federated Investors, Inc., to Marlene Dortch, Office of the Secretary, FCC, at 2-3 (Oct. 14, 2005).

[75] CPS Comments at 6-7.

[76] *See* USAC Comments at 77.

ensure ample oversight of the Fund's investment performance and conformity with investment objectives approved by the Commission.

i. Codification of USAC Administrative Procedures

The Commission's questions whether it should codify certain USAC administrative procedures, and how a beneficiary's compliance or lack of compliance with USAC non-codified administrative procedures should be treated in the auditing context, generated diverse comments.[77] Some parties support codifying in regulations USAC's operating procedures[78] (some believe the Schools and Libraries program's Program Integrity Assurance (PIA) review procedures should be codified) while others oppose such codification.[79] The E-Rate Service Provider Forum cautions the Commission about "creating more opportunities for applicants or service providers to lose funding."[80] Regardless of the extent to which USAC's operating procedures are formally codified, most commenters supported publicizing in a single, comprehensive manner USAC's operating procedures to the extent those procedures affect the substantive rights of program participants.[81]

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[77] *See NPRM*, ¶ 22.

[78] *See* CTIA Comments at 4-5; Comments of Hispanic Information and Telecommunications Network at 2 (HITN Comments); FCC OIG Comments at 3; Kellogg & Sovereign Comments at 4-5, 8-9 (also proposing a cut-off date for additional procedures and certifications); Comments of Trillion Partners, Inc. at 2, 4 (Trillion Comments); On-Tech Comments on Notice of Proposed Rulemaking at 3 (On-Tech Comments); Weisiger Comments at 19-23.

[79] *See* AASA/AESA Comments at 5-6; FW&A Consulting/Thomas Neal Comments at 4-5 (FW&A Consulting Comments); Verizon Comments at 21-22.

[80] Comments of the E-rate Service Provider Forum at 2 (ESPF Comments).

[81] *See*, *e.g.*, AASA/AESA Comments at 5-6, 15; Comments from Arkansas E-rate Work Group on the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking at 5-6 (AEWG Comments); CPS Comments at 25; Dobson Cellular Comments at 7-8; EdLinc Comments at 19; ESPF Comments at 2-

USAC has various education and outreach initiatives underway to assist applicants and service providers in understanding and complying with program rules. USAC plans to publish on its website a list of program reference documents including the Telecommunications Act of 1996, relevant sections of the Code of Federal Regulations, and the important FCC orders and appeal decisions that govern USF administration. In December 2005, USAC released a redesigned and improved website that will make information and program guidance more accessible to program participants. In addition, USAC publishes the weekly Schools and Libraries News Brief highlighting timely information and providing program compliance tips. Any interested entity may subscribe, and over 40,000 customers receive this weekly electronic newsletter.

These efforts notwithstanding, USAC agrees it would be valuable to USF participants to provide a single, comprehensive source for all program requirements and will work to ensure this occurs in a timely fashion. USAC disagrees, however, that detailed internal USF operating procedures should be codified.[82] Although the Commission has previously codified certain USAC administrative procedures,[83] USAC believes codification of all internal operating procedures would unduly restrict its ability to perform its duties in a flexible and responsive manner and would unnecessarily bind

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3; National Association of State Telecommunications Directors Comments at 4 (NASTD Comments); Qwest Comments at 26; Verizon Comments at 19-20.

[82] *See* USAC Comments at 81-82. In October 2005, USAC filed its second annual submission of its Schools and Libraries administrative procedures pursuant to the Commission's direction in the *Schools and Libraries Fifth Order*. Universal Service Administrative Company, Schools and Libraries Program Administrative Procedures (filed Oct. 31, 2005). This filing lists administrative procedures that are currently used to lead to Schools and Libraries program funding decisions that, although derived from program rules and/or guidance, may not be explicitly stated in Commission rules.

[83] *See* USAC Comments at 79-80.

the Commission as well. USAC's "administrative procedures" are largely detailed operating processes designed to achieve administrative efficiency and compliance with the Commission's rules. As the American Association of School Administrators and the Association of Educational Service Agencies explain, "[a]dministrative policies need not be codified, but clarified, and publicized for applicant use. Once codified, they become more difficult to change in an ever-changing technology world."[84] Similarly, Verizon states "[c]odifying administrative procedures would not give the administrator the flexibility to respond promptly to changing circumstances, because changes to the procedures would require rulemaking proceedings, which takes months or years to accomplish."[85] Furthermore, details of many of the procedures must remain confidential in order to ensure program integrity.[86]

Numerous commenters addressed the transparency of policy guidance provided by the Commission to USAC. CTIA and NTCA, for example, suggest when USAC seeks guidance from the Commission on interpretation of rules, carriers and participants should also be given an opportunity to comment.[87] The general theme of these comments is USAC procedures, particularly procedures making significant changes to existing processes or implementing new Commission directives, should be publicized in advance so stakeholders have an opportunity to comment or suggest changes.[88] While it could be

[84] AASA/AESA Comments at 5-6.

[85] Verizon Comments at 21-22.

[86] *See* USAC Comments at 82.

[87] *See* CTIA Comments at 3-4, 16; NTCA Comments at 5-6.

[88] *See, e.g.,* BellSouth Comments at 5 (new procedure approval process "should provide contributors and recipients reasonable notification of potential changes . . . allow stakeholders to provide relevant input in

difficult to establish clear guidelines for determining precisely when USAC procedures affect carriers' "substantive rights," some type of expedited Commission review of policy issues raised by USAC could be helpful. On the more substantial question of whether the Commission should require certain types of USAC procedures to be published for some type of formal or informal comment period before implementation, the Commission should be careful to avoid a process that produces considerable and possibly unworkable delays in implementing administrative changes that may be vital to operational efficiency and program integrity.

Notably, Dobson Cellular proposed an expedited review process for those USAC procedures affecting "substantive carrier rights (as contributor or beneficiary)" along with a presumption that such procedures present policy issues that must be resolved by the Commission.[89] Under this plan, either USAC, the carrier, or both could request expedited review from the Commission when such issues arise with action required by

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advance . . . and allow stakeholders to submit reasonable requests for changes."); CTIA Comments at 4 (proposing the Commission put advisory requests from USAC out for public comment); Dobson Cellular Comments at 7 (USAC should be required to publicly file and keep updated a manual of operational procedures for contributors and recipients); IDT Comments at 5 (proposing the Commission issue for comment any USAC administrative procedures implementing FCC rules followed by codification in the rules); SBC Comments at 5-6 ("the Commission could require USAC to submit a report on measures it proposes to adopt to implement new universal service rules and policies, allowing interested parties expeditiously to seek Commission review of those measures for consistency with Commission intent before the measures go into effect"); Sprint Nextel Comments at 4-6 ("[c]odification or at least publication of new processes, procedures, and FCC-USAC policy guidance prior to their implementation . . . will help to ensure that all parties have . . . an opportunity to address problem areas in a timely way.").

[89] *See* Dobson Cellular Comments at 7-8.

the Commission within 60 days.[90] CTIA and SBC also suggested forms of expedited Commission review.[91]

USAC does not agree with some commenters' assertions that existing USAC procedures exceed the scope of Commission directives or that USAC oversteps its administrative charter. Nevertheless, USAC acknowledges its job as administrator is at its most challenging when faced with gaps in Commission rules and orders that must be filled in the absence of further guidance from the Commission and without crossing the line into creating policy. As USAC noted in its Comments, discussion between USAC and the Commission regarding the types of activities deemed administrative and those deemed prohibited policy-making would be useful.[92]

j. Continuity of Operations

In its Comments, USAC noted it has been working closely with Commission staff to develop a continuity of operations (COOP) plan to ensure USAC can continue to perform its mission-critical functions in the event of an incident or emergency situation.[93] The Office of the Inspector General "question[s] the need for public comment on this point since USAC has a COOP which is currently being audited by OIG."[94] Given the ongoing work on USAC's COOP, this issue can safely be tabled in this proceeding.

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[90] *See id.*

[91] *See* CTIA Comments at 4 (establish expedited procedures for USAC to seek formal Commission advice on policy matters); SBC Comments at 5 (permit parties to seek expeditious review of proposed USAC process changes); *see also* CTIA Comments at 4 (noting the risk that, in the absence of procedures for expedited Commission review, USAC requests for policy guidance "could languish indefinitely").

[92] *See* USAC Comments at 41-44, 49-50.

[93] *See* USAC Comments at 84; *see also NPRM*, ¶ 23.

[94] FCC OIG Comments at 3.

2. Performance Measures

Commenting parties generally agree Schools and Libraries program performance measures are essential and should be based on one or more of the following: connectivity, access, and deployment of advanced services.[95] Parties differ, however, on the scope of such measurements and the meaning of "connectivity" in assessing performance. The California Department of Education, for example, asserts "[c]onnectivity should be defined as providing complete physical networks, Internet access, telecommunications and ongoing basic maintenance for every school district, every school, every classroom and every library in the nation."[96] Similarly, EdLinc argues that the program was designed to evolve as technology evolves, and consequently is not "a one-time investment."[97] Some commenters advocate using the Commission's Section 706 Report as a benchmark for determining whether the program is achieving its

[95] *See* ALA Comments at 32; AASA/AESA Comments at 7-9; Comments to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking Filed by the California Department of Education at 5-6 (California DOE Comments); CPS Comments at 8-11; EdLinc Comments at 5-9; ESPF Comments at 5-6; Great City Schools Comments at 9-10 (also suggesting the Commission convene a task force to address this topic prior to making rule changes); HITN Comments at 3; ISTE/COSN Comments at 3-4, 5-11; Kellogg & Sovereign Comments at 4-5; LAUSD Comments at 3; Comments of the National Rural Education Advocacy Coalition at 2-3 (NREA Coalition Comments); PSTC Comments at 3-4; SECA Comments at 63-66; NEILSA Comments at 3-4; WVDE Comments at 3-4; Comments of the Council of the Chief State School Officers at 2-4 (CCSSO Comments); Wisconsin Dep't of Public Instruction Comments at 3-4 ("the most useful and valid measure is the number of eligible applicants served and their level of participation"); Weisiger Comments at 2-4. *But see* Alexicon Comments at 9 (proposing the Commission establish a task force of subject matter experts to develop performance measures for further public comment); Qwest Comments at 17-18 (suggesting the Commission use the Accountability Measures for the Department of Education's Enhancing Education Through Technology (EETT) formula grants as the performance measures for the Schools and Libraries program).

[96] California DOE Comments at 6.

[97] EdLinc Comments at 7. *See also* PTSC Comments at 2; SECA Comments at 63.

goals,[98] while others urge the Commission to ensure that performance measures take into account smaller schools and low-population density areas.[99]

Commenters take different positions regarding whether the impact of USF funds could or should be isolated from other funding sources,[100] and whether to gauge performance based on the number of students served.[101] Many parties state the Commission should not tie performance measures to student achievement, some noting the program is best evaluated as a technology program, not as an education program.[102] Some commenters agree with USAC that comparing applicants in the Schools and Libraries program to the Department of Education's list of schools nationwide would enable the Commission to determine which schools do not have connectivity.[103]

As USAC noted in its Comments, connectivity continues to be a valid measuring tool, but measurement should also include the quality of the connectivity and its impact on education and library services—the educational uses to which it is being put and the effect of the connectivity on education; and for library services, how the connectivity is

[98] *See* CCSSO Comments at 3; EdLinc Comments at 11.

[99] *See* Comments of General Communication, Inc. at 14-17 (GCI Comments).

[100] *See* AASA/AESA Comments at 7; California DOE Comments at 7; CPS Comments at 10; Comments of Miami-Dade County Public Schools at 20 (Miami-Dade Comments); WVDE Comments at 4; Wisconsin Dep't of Public Instruction Comments at 4.

[101] *See* California DOE Comments at 7-8; CCSSO Comments at 4; NEILSA Comments at 3-4; On-Tech Comments at 4.

[102] *See* CPS Comments at 9-10, CCSSO Comments at 2-3, EdLinc Comments at 8-9; Wisconsin Dep't of Public Instruction Comments at 3-4; PSTC Comments at 3-4. *But see* Mercatus Center, George Mason University, Public Interest Comment on Performance Measures for Universal Service Programs at 5-10 (arguing that effect on educational outcome is an appropriate measure).

[103] AASA/AESA Comments at 9; On-Tech Comments at 4.

used to improve library services.[104] USAC proposed posing specific questions during site visits and audits to gather this information.[105] The comments described above reinforce USAC's initial conclusions. Performance measures must address Congressional and Commission goals for the Schools and Libraries program, including expanding affordable broadband services nationally, in line with Section 706 of the Telecommunications Act of 1996. Performance measures need not be tied directly to student achievement, but assessing what the technology enables schools and libraries to do that they could not do before would be an appropriate measure.

With regard to the Rural Health Care program,[106] there was a general consensus among commenters, including USAC, that additional output, outcome and efficiency measures would be beneficial.[107] Although GCI supports outcome-based and output-based measures, it states proposals to compare rural and urban rates, measurements of the percentage of eligible rural health care providers receiving USF support, and measurements of the number of people who obtain care from rural health care providers participating in the program are misleading.[108] GCI argues "[a] better measurement than any of the three proposed by the Commission would be to measure the *relative* usage of the supported services."[109]

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[104] USAC Comments at 86-87.

[105] *See id.* at 87-88.

[106] *See NPRM*, ¶ 30.

[107] *See, e.g.,* BellSouth Comments at 12; GCI Comments at 5; USAC Comments at 94-97.

[108] *See* GCI Comments at 17-19.

[109] GCI Comments at 20.

Finally, commenters generally agree that measuring USAC's performance as USF administrator is appropriate, and they present a variety of proposals, including assessing penalties when USAC and its vendors fail to meet performance measures,[110] requiring USAC to prepare annual performance plans and reports to aid the Commission's oversight,[111] and making USAC performance reports available to the public.[112] The Chicago Public Schools proposes that the Commission set internal processing goals and specific performance and effectiveness measures, such as accuracy and speed of processing applications, for USAC.[113]

In its Comments, USAC made clear its strong support for the development and implementation of additional performance measures for evaluating the administration of the USF, and listed specific measures related to USAC's administration that would be appropriate.[114] USAC looks forward to establishing appropriate additional performance measures for USAC's administration of the USF, including those proposed by the various USF stakeholders in this proceeding.

[110] BellSouth Comments at 12; GCI Comments at 27; Qwest Comments at 17-18; California DOE Comments at 4-5.

[111] ESPF Comments at 6.

[112] SECA Comments at 9-11.

[113] CPS Comments at 10-11.

[114] USAC Comments at 99-100.

3. Program Management

a. Application Process

(i) Schools and Libraries Program

A. Streamlining the Application Process

Multi-Year Application Process. Many commenters support the Commission's tentative conclusion[115] that it should adopt a multi-year application process—in many cases specifically three years—for priority one (telecommunications and internet access) services.[116] Other commenters suggest a multi-year process for multi-year contracts should be available for all supported services.[117] Commenters propose a variety of ways in which a multi-year process could be implemented.[118] However, most commenters

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[115] *NPRM*, ¶ 37.

[116] *See* AASA/AESA Comments at 12; AEWG Comments at 8; BellSouth Comments at 8; CCSSO Comments at 5-6 (also suggests shortened and simplified forms for applicants seeking funding for priority one services only and that all priority one services should be considered shared services); Kellogg & Sovereign Comments at 7-8; Comments of South Carolina K-12 Technology Initiative Partnership at 2 (applications for services from state telecommunications networks should be for the same amount of time as the contract upon which they are based) (K-12 Committee Comments); ESPF Comments at 12-13 (a three-year process would coincide with the three-year technology planning process); EdLinc Comments at 15; ISTE/CoSN Comments at 22-23; NASTD Comments at 5 (multi-year process could complement multi-year state master contracts); NYCDOE Comments at 4-7; PSTC Comments at 4; Qwest Comments at 23-24; Verizon Comments at 14-15; Weisiger Comments at 15.

[117] *See* AASA/AESA Comments at 12; CPS Comments at 16-17, 22; GCI Comments at 23-24; NASTD Comments at 6; Trillion Comments at 2.

[118] *See* California DOE Comments at 10 ("[o]nce a contract and funding request number (FRN) have been approved, subsequent requests for that specific contract should be approved with little or no additional review"); ESPF Comments at 12-13 (multi-year process should apply to both contracted and non-contracted priority one services, applicants could provide updates on a simple form each subsequent year, USAC would not review the applications unless there was cause for concern and funding in subsequent years would be assured unless issues arose that had not been identified in the first year, new rules or procedures would not apply to the application once it had been funded for the three year period of time); Kellogg & Sovereign Comments at 8 (once a multi-year process has been implemented for priority one services, the Commission could consider a similar process for priority two services); LAUSD Comments at 3 (proposing three-year commitments based on multi-year contracts); NEILSA Comments at 2-3 (applicants should only have to apply for priority one services once, and thereafter send in "a one-page renewal application").

appear to expect they would be able to make minor modifications to applications in subsequent years.[119]

One commenter states that applicants should not have to post FCC Form 470[120] annually for non-contracted services, and suggests that the Commission allow applicants to rely on an FCC Form 470 posting for such services for three years, asserting that the current annual posting requirement requires applicants to discontinue services, post the FCC Form 470, wait 28 days and then reconnect the services.[121] USAC would like to clarify that applicants do not have to discontinue services under these circumstances. If the applicant posts a new FCC Form 470 and selects the incumbent provider, then it simply continues that service. Because these are non-contracted services, there are no new contracts or other paperwork that might require termination and reconnection of service. To the extent the applicant receives multiple bids and the incumbent is not the most cost-effective offering, then the applicant would have to terminate service to be eligible for funding. A contract for multi-year service avoids this scenario.

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[119] ESPF Comments at 12-13 (applicants could seek annual increases of 10% without triggering review); ISTE/CoSN Comments at 22-23 (applicants who submit multi-year applications should be permitted to re-submit applications prior to the expiration of the third year because of the rate of change in technology); Kellogg & Sovereign Comments at 8 (applicants would need to be able to increase their funding requests in the second and third years to accommodate increased prices and/or additional services for new buildings; suggests IA review would be triggered for increases over 10%); LAUSD Comments at 3 (PIA review would be triggered for increases from year to year of more than 10%), NASTD Comments at 6 (a multi-year process would need to allow for reductions and increases in funding requests); NYCDOE Comments at 5 (multi-year approvals would be capped, but should allow for increases as a result of, for example, growth in student enrollment or new buildings, when such changes occur, applications should undergo a full review process, also proposing a nationwide procurement process); Verizon Comments at 16 (applicants could submit an "abbreviated" FCC Form 471 that references a prior year application, and USAC's review would focus on what had changed from the original application).

[120] *See* 47 C.F.R. § 54.504(b); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (FCC Form 470).

[121] Verizon Comments at 15-16.

USAC proposed a two-year process for all priority one and priority two (internal connections) services based on multi-year contracts as well as a two-year application process for non-contracted priority one services because such a process would provide benefits without creating an undue administrative burden.[122] USAC's experience suggests that significant technology improvements and price changes are likely to occur during a three-year period and consequently program participants could have to forego potential technology improvements and/or price decreases. In addition, the administrative efficiencies of a multi-year process could be lost if USAC were required to review the modified requests a second time and/or if there were a marked increase in service substitution requests.[123]

Because most commenters appear to expect that they would be able to make minor modifications to applications in subsequent years, USAC wishes to emphasize that a multi-year application process will result in lessening administrative burdens on participants and USAC to the extent the process is geared toward applicants that receive the same services from the same providers at the same cost year after year. To the extent a single Funding Request Number (FRN) could cover a multi-year period, the burden on

[122] USAC Comments at 105.

[123] A multi-year commitment process assumes that concerns are addressed regarding applicability after December 31, 2006 of the federal Antideficiency Act, 31 U.S.C. § 1341(a) (ADA), to Schools and Libraries funding commitments. The ADA prohibits federal agencies from incurring obligations in advance or excess of available appropriations. Commission staff determined for the first time in 2004 that the ADA applies to the USF. The ADA requires USAC to have sufficient "unobligated" funds on hand to cover any new commitments. The USF is exempt from the ADA until December 31, 2006. *See* H.R. 2682, Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 § 633 (signed into law Nov. 22, 2005).

applicants, service providers and USAC will be eased.[124] In other words, the burden the annual application process places on applicants, service providers and USAC would be lessened only to the extent that the number of FRNs for which funding is sought, supporting documentation provided, and USAC need to review decreases. USAC is committed to working closely with the Commission as it defines the contours of this process to ensure the expected improvements occur.

Other Proposals to Streamline the Application Process. Many parties propose a variety of incremental changes to streamline the application process.[125] Some commenters propose a streamlined process for applications below a particular dollar threshold.[126] USAC commends program participants for their input, which is critical to improving the program. USAC commented that it is in the process of reviewing its

[124] USAC Comments at 104-05.

[125] *See* California DOE Comments at 5, 10, 13-14 (consider opening the filing window earlier so that more decisions can be made before the start of the funding year, once a funding request based on a particular contract has been approved, subsequent funding requests based on the same contract should be approved with little or no review); CPS Comments at 15 (advocating that the application and invoicing review processes be streamlined to avoid duplicative requests for information, and ensure "that program requirements are publicly available and easily understood"); Great City Schools Comments at 13 (application review procedures should be streamlined to avoid duplicative reviews and to enable reviewers to gain expertise with large applicants); Miami-Dade Comments at 9-10, 16 (USAC should approve "repeat requests" expeditiously based on a check box on FCC Form 471 allowing applicants to indicate that there are no changes from the prior year's request which was approved based on the same contract; modify FCC Form 471 to allow changes such as adding and deleting sites; create two funding cycles for priority one and priority two requests); State Educational Technology Directors Association Comments at 5 (supporting the Commission's simplification and streamlining efforts and noting that applicants should not have to use consultants to apply to the program); Wisconsin Dep't of Public Instruction Comments at 5-7 (as part of a simplified process for priority one services, technology plans would not be required, applicants would apply only once on a one-page application and thereafter send in renewals, and USAC would obtain necessary documentation such as Item 21 attachments directly from the service provider, priority two process would remain more detailed).

[126] NEILSA Comments at 2, 5 (proposing a simplified process for priority one services, with a more detailed process for priority two, suggesting USAC fund all electronically filed applications under $10,000 upon receipt of applicant certification and "[f]ollow-up spot audits would be allowed after all the other funding commitments had been processed", USAC would obtain supporting documentation for telecommunications services from service providers rather than applicants.); Weisiger Comments at 15.

procedures with a focus on simplifying them to the extent possible while maintaining adequate and effective program integrity controls.[127] USAC commented that to address delays attributable to requests for documentation from applicants and service providers, it has revised its customer contact templates to avoid duplicative requests for documentation.[128] The level of scrutiny of applications should be commensurate with risks to program integrity. USAC will continue to seek ways to streamline filing and administrative review processes accordingly. For example, a streamlined review process should be used for smaller priority one applications below a certain threshold. USAC also intends to pursue strategies to simplify reviews where feasible for applications for recurring services. USAC also stated its review procedures could be further streamlined for priority two applications seeking smaller amounts of funding.[129]

Clerical Errors. In the context of discussing a simplified application process, some commenters suggest applicants should be able to make clerical corrections to program forms rather than lose funding as a result of those errors.[130] Commenters suggest applicants should be able to increase their funding requests as well as decrease them.[131] Mistakes on FCC Form 471s[132] can be corrected within the filing window, and

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[127] USAC Comments at 110.

[128] *Id.* at 123.

[129] *Id.* at 110.

[130] *See* AASA/AESA Comments at 5-6; CPS Comments at 7-8; GCI Comments at 22; LAUSD Comments at 4.

[131] *See* AEWG Comments at 8; ESPF Comments at 25 (proposing that applicants should have four weeks after the close of the window to review their FCC Form 471s and make corrections).

[132] *See* 47 C.F.R. § 54.504(c); Schools and Libraries Universal Service, Description of Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

USAC usually advises applicants to file a new FCC Form 471 if a correction to increase funding is necessary. If an applicant needs to correct its FCC Form 471 filed near the close of the filing window, however, it is unlikely that it will have time to resubmit its application. At the close of the filing window, USAC must estimate program demand so it can issue funding commitments at the appropriate discount levels because program demand significantly outstrips available funds.[133] Allowing post-window changes resulting in increased funding requests would preclude an estimate of the true demand and jeopardize the authorization for timely commitments.

Collection of Information. A few commenters oppose USAC collecting information from participants on forms not approved by the Office of Management and Budget (OMB) and collecting information and documentation during the application and invoicing review process not identified in the instructions for the relevant forms.[134] As part of its Program Integrity Assurance (PIA) review activities, USAC collects information and documentation from applicants when USAC requires applicants to, for example, demonstrate compliance with the Item 25 "necessary resources" certification on FCC Form 471. USAC also collects additional certifications from applicants to confirm receipt of service and equipment prior to disbursing funds for some invoices. The Commission has confirmed USAC's ability to collect this information for these purposes

[133] *See* 47 C.F.R. § 54.507(g).

[134] *See* ALA Comments at 17; AEWG Comments 6; CPS Comments at 7-8; SECA Comments at 56-59.

and it is essential that USAC do so to verify compliance with program rules and to protect the USF from waste, fraud, and abuse.[135]

Self-Certification. Some commenters question why USAC reviews applications and invoices at all since the program is in many respects based on self-certification by applicants and service providers.[136] The California Department of Education, for example, asserts USAC's tests of applicant self-certifications are counterproductive, and suggests instead that applicants meeting a trigger based on the complexity of the application or the amount of the funding request undergo an audit.[137] USAC is responsible for administering the universal service programs in an efficient, effective and competitively neutral manner[138] and for taking administrative action to ensure program integrity.[139] USAC, with Commission guidance, has developed review procedures to ensure it fulfils these important responsibilities. USAC's experience suggests it would be inconsistent with its administrative and fiduciary obligations to fund applicants based exclusively on self-certifications without any review.

[135] *See, e.g., Request for Review of the Decision of the Universal Service Administrator by New Orleans Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc*., CC Docket Nos. 96-45, 97-21, Order, 16 FCC Rcd 16653, 16658, ¶ 12 (2001) ("Initially, we must emphasize the importance of SLD's Item 25 'necessary resources' review. The necessary resources certification requires applicants to examine their technology needs and available technology and budgetary resources before making funding requests, in order to ensure that applicants will be able to make effective use of any discounted services they receive. As noted before, we have concluded that SLD's process for reviewing this certification is critical to curbing waste, fraud and abuse and to ensuring that the resources of the schools and libraries universal service support program are used in compliance with statutory requirements.") (footnotes omitted).

[136] *See* Comments of the E-rate Coordinator of the State of Alaska at 9 (Alaska Comments); California DOE Comments at 10-11.

[137] California DOE Comments at 10-11.

[138] *See* 47 C.F.R. § 54.701(a).

[139] *See* 47 C.F.R. § 54.702(g).

Participation of Small Schools and Libraries. Some commenters agree with the Commission's suggestion in paragraph 37 of the *NPRM* that the complexity of the program serves as a deterrent to participation by small schools and libraries, and made various suggestions to address the issue.[140] Several commenters advocate "E-Z" forms or a simplified process overall for priority one services to, among other things, encourage small schools and libraries to apply.[141] CTIA, for example, suggests a simplified system with support based on the type of support requested, applicant size and level of poverty, and the "most efficient (least cost) technology available."[142] USAC commented that its interview-style FCC Form 470 and FCC Form 471 are targeted at smaller applicants and applicants applying for limited funding, targeted training for small non-public schools is planned, and application review procedures could be further streamlined for applications requesting smaller amounts of funding.[143] USAC commented that introducing additional forms could create confusion as well as increase opportunities for denials.[144] USAC reiterates that creating additional forms is not the solution; rather, increased participation by smaller entities depends on simplifying current processes and conducting effective

[140] *See* AAEA/AESA Comments at 12; ALA Comments at 6-7; California DOE Comments at 9; Comments of Auburn School District at 1; Comments of Inchelium School at 1; Comments of McCord Memorial Library at 1; Comments of the West Virginia Library Commission at 2-3; Wisconsin Dep't of Public Instruction Comments at 7; CTIA Comments at 13 (the competitive bidding process is "cumbersome" for small beneficiaries, and the technology plan requirement is a "hindrance" and suggesting the Commission eliminate these burdens); EdLinc Comments at 10, 15; ISTE/CoSN Comments at 21-22 (since small and rural applicants are overwhelmed by the process of "getting started" USAC should provide more technical assistance); Miami-Dade Comments at 7-8.

[141] *See* AAEA/AESA Comments at 12; California DOE Comments at 10; EdLinc Comments at 15; WVDE Comments at 5.

[142] CTIA Comments at 12.

[143] USAC Comments at 109-10.

[144] *Id.* at 109, 143.

education and outreach. To that end, USAC has initiated targeted outreach for small, non-public schools.[145]

Providing Status Information to Program Participants. Commenters agree USAC should provide as much status information as possible to program participants and requested USAC provide more detailed and up-to-date information about the status of applications and other transactions including invoices.[146] Commenters proposed numerous enhancements to the information USAC provides to program participants.[147] In addition, several parties request that USAC provide more detailed and timely information about why funding is denied so that, for example, applicants can make an informed decision about whether to appeal and can avoid making the same mistake in the next funding year.[148] GCI states that appeals decisions should be made by a different staff person than the one who made the original decision and claims that "the USAC

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[145] USAC Comments at 109. USAC conducted one such outreach session on December 12, 2005.

[146] *NPRM*, ¶ 37; *See* AEWG Comments at 8; CPS Comments at 17; NEILSA Comments at 6; NASTD Comments at 7; Trillion Comments at 7; Wisconsin Dep't of Public Instruction Comments at 8.

[147] *See* Comments of Avaya at 4, 8 (USAC should create an invoice tracking system similar to that in place for FCC Form 471, should establish deadlines for responding to questions from service providers, and should provide feedback to whistleblowers) (Avaya Comments); ESPF Comments at 3-4 (USAC should copy service provider contact for the SPIN associated with each FRN on each contact with applicant, not deny funding requests for lack of applicant response without first contacting the service provider and "allow the service provider to request an extension" of time to respond); GCI Comments at 29 (the general public should have access to USAC's appeals decisions and to online appeals tracking data); Kellogg & Sovereign Comments at 9 (service providers should be copied on the second notice to the applicant and should be able to request extensions on behalf of the applicant); On-Tech Comments at 7-9 (applicants and service providers should have access to USAC's internal tracking tools; USAC should send the applicant contact an e-mail at each stage of the process informing it of the status of the application; these e-mail notifications could include warnings about upcoming deadlines; USAC should provide more information on its website about service providers, including more detailed contact information; information about whether the service provider is under red-light, in bankruptcy, debarred, or under investigation; whether the service provider provides discounted bills and if so, what fees the service provider charges to do so; and finally a link to all FRNs associated with each SPIN).

[148] *See* AASA/AESA Comments at 10; AEWG Comments 10; EdLinc Comments at 10; ESPF Comments at 4; Great City Schools Comments at 8; NASTD Comments at 7.

process does not observe this basic principle of appellate review."[149] In response, USAC wishes to clarify that different teams are dedicated to original review of applications and appeals.

USAC makes a great deal of information available to program participants today. USAC maintains a list of suspended and debarred entities in a prominent place on its website. While USAC does not maintain a list of service provider companies in bankruptcy, USAC works with applicants upon request by way of the Good Samaritan process in cases where applicants could be detrimentally affected by service provider bankruptcy. There are, however, some limitations on USAC's ability to make certain information available. For example, the Commission considers the Red Light Rule status[150] of any entity proprietary information and USAC is therefore unable to publicly post such information.

As stated in its comments, USAC strives to provide as much information as possible to program participants and USAC has plans to introduce more detailed reporting on transaction status in a secure manner for program participants.[151] This will allow service providers and applicants to retrieve data related only to their transactions. In addition, USAC is currently evaluating a comprehensive strategy across all universal service programs to provide more information to program participants and to enhance the automation of its processes and communications with program participants. Specifically with respect to the Schools and Libraries program, USAC intends to make available an

[149] GCI Comments at 29.

[150] *See* USAC Comments, Appendix A at 13-15.

[151] USAC Comments at 110-12.

enhanced Data Retrieval Tool on its website to provide easier access to applicant information. USAC's new applicant personal identification number (PIN) system will provide the basis for additional innovations to allow applicants access to information regarding the status of their applications and appeals. USAC recently enhanced its online FCC Form 471 application status tool and plans to develop a tool to allow service providers to view the status of submitted invoices using a secure interface as well as provide information on the status of appeals. This tool would also be available to applicants to view invoices related to the applicant's approved commitments. In addition, USAC is in the process of reviewing its letters to program participants with a goal of making denial reasons clearer and more understandable where needed. To the extent USAC has not already considered or is not implementing enhancements proposed by commenters, USAC will evaluate the many suggestions put forth and take steps to implement those which are administratively feasible and within the parameters of USAC's comprehensive strategy.

USAC's Outreach Activities. Commenting parties state USAC needs more effective outreach. Specifically, commenters suggest USAC provide clearer guidance about program requirements in one document or location,[152] nationwide training and a short online training program,[153] more guidance translated into Spanish,[154] more extensive training,[155] regular and, for large applicants in particular, ongoing dedicated

[152] CCSSO Comments at 9; *see also* above at 22-26.

[153] AASA/AESA Comments at 3, 19.

[154] HITN Comments at 2.

[155] GCI Comments at 24.

professional development, training and technical assistance.[156] The California Department of Education suggested USAC increase its ombudsman staff so that, for example, there are dedicated ombudsmen for every 500 applicants.[157]

USAC described its outreach activities in the Appendix to its Comments.[158] USAC continues to expand its outreach to school and library applicants and service providers. In preparation for Funding Year 2006, USAC conducted four training sessions nationwide that were open to any interested party including applicants, service providers, consultants, and state program coordinators. Current plans include more targeted outreach to groups with specific issues, improved communications including clearer and more specific explanations of decisions in funding letters and appeal letters, and continuing and expanding monthly outreach calls. USAC's new Education and Communications Division is providing coordination and guidance for all four universal service programs.

Using Technology to Improve the Application Process. Commenters offer a variety of suggestions for further automation in response to the Commission's request for suggestions on using technology to improve the application process.[159]

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[156] *See* CPS Comments at 17-18; Great City Schools Comments at 3-4, 8.

[157] California DOE Comments at 10, 16, 18.

[158] USAC Comments, Appendix A at 66.

[159] *NPRM*, ¶ 37. *See* AASA/AESA Comments at 12-13 (supporting a "complete online application process" for both filing and monitoring applications); AEWG Comments at 8 (applauding USAC's implementation of Block 4 upload capability, and suggesting USAC implement the same functionality for Block 5); Avaya Comments (reviewer's eligibility determinations should be reflected in the EPD); California DOE Comments at 12 (suggesting quarterly disbursement amounts be available online, and Item 21 attachments be standardized and "aligned with the invoice form"); CPS Comments at 13, 16 (complete online process would "work well" for CPS, but noting that "some applicants may not have the resources for an electronic-only notification" and that any system would need to allow for the preservation

A number of commenters suggest USAC provide service providers with access to the Item 21 attachments submitted by applicants or to review submitted applications for errors.[160] One commenter suggests USAC publish Item 21 attachments both so that service providers know which specific products and services have been approved for funding, and in order to increase competition.[161] USAC supports providing service providers with PIN-controlled access to Item 21 attachments that include their Service

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of any documentation that could be needed to support an appeal, also suggesting USAC allow for batch imports and other off-line data entry capabilities to the fullest extent possible); ESPF Comments at 11-12 (Commission should direct USAC "to make all program forms available for online filing," eliminate the paper Receipt Acknowledgment Letter (RAL) sent to applicants and require them to review their application using the online tool, require all FCC Forms 471 to be submitted online by a certain date, require online submission of FCC Form 486 and eliminate the notification letter and require applicants to monitor the Data Retrieval Tool to learn whether their service provider(s) have submitted invoices to USAC, require USAC to develop an online FCC Form 472, and set a goal for the elimination of all paper forms or in the alternative process paper forms after electronic submissions); EdLinc Comments at 16 (advocating a complete online process and noting that this would help avoid ministerial errors); Great City Schools Comments at 13 (USAC should put in place a tracking method for appeals, and develop the capability to allow appeals to be filed on line through the use of a page similar to the "Submit a Question" feature with a drop-down menu providing the most common grounds for appeal); GCI Comments at 20-21 (USAC needs to be able to accept electronically submitted supporting documentation from program participants); Miami-Dade Comments at 11 (suggesting that the receipt acknowledgement letter be eliminated for electronically-submitted FCC Forms 471 and replaced with electronic notification); Kellogg & Sovereign Comments at 6 (USAC should use Universal Product Codes (UPCs) to identify eligible products to speed the invoice review process); NASTD Comments at 7 (applauding USAC's development of the online Item 21 attachment and block 4 upload, and suggesting USAC develop the same facility to upload block 5); On-Tech Comments at 5-6 (FCC Form 470 should allow applicants to select quantities and sizes from a list of eligible services, service providers should submit bids online and applicants should select winning bids online, URL to Forms 486 should be sent to applicants each July 1, and all invoices would be submitted online); Qwest Comments at 24 (USAC should send automatic e-mail notifications to participants as deadlines approach); SECA Comments at 41-46 (USAC should create an "E-rate portal" for applicants that would allow applicants to conduct all program business online, from submitting applications by copying information from the prior year submission, selecting products and services using the online Item 21 attachment tool and providing certifications required for the products and services at that time, indicating the choice of billing method for each block 5 entry, making all CIPA-related certifications, and activating FRNs, thereby eliminating the need for FCC Form 486, and allowing applicants to review the status of their applications and request service substitutions, SPIN changes, split FRNs, and obtain reimbursements); Weisiger Comments at 2, 8, (asserting that USAC loses applications and documentation, applicants are required to respond to duplicative requests for supporting documentation, provides inaccurate advice to program participants, makes improper funding denials).

[160] *See* California DOE Comments at 12; GCI Comments at 21; Qwest Comments at 24; Verizon Comments at 17-19.

[161] On-Tech Comments at 6.

Provider Identification Number (SPIN) and will explore the feasibility of implementing such a system in connection with the new online Item 21 attachment currently under development.

The Council of Great City Schools asks USAC to provide a way to track service substitution requests and to allow automatic renewal of certain types of requests.[162] A simplified service substitution process could speed up reviews of minor changes that now require substantive review. For example, a straightforward change such as substitution of a different router model could be approved electronically, speeding up service substitutions and invoices.

USAC commends program participants for their many suggestions. USAC has already addressed some of these suggestions such as pre-populated fields on forms and the enhanced online FCC Form 471 application status tool. USAC has determined that some fields should not be pre-populated for quality assurance and program integrity reasons. USAC strongly supports increased automation in the application process and is working toward a goal of having all program transactions available electronically and encouraging their use. In its Comments, USAC described the many steps it has already taken to automate the process, as well as the measures it intends to implement.[163] USAC is working to enable electronic notifications and letters for all recipients having the capability to accept them. In addition, building on the foundation of the new applicant PIN system, USAC plans additional applicant tools to allow program participants to

[162] Great City Schools Comments at 8.

[163] USAC Comments at 114-17.

access their own forms and letters and to obtain status reports of pending documents. USAC also plans to develop tools so that applicants and service providers can conduct all their business with USAC online. While USAC will continue to use its best efforts to promote online submission of all forms, USAC recognizes it must make paper submission and receipt an option for program participants. USAC does not at this time agree with suggestions to eliminate the various notification letters because USAC's experience suggests these notifications are important and useful to many program participants.

As noted above, USAC is currently evaluating a comprehensive strategy across all four universal service programs to provide more information to program participants and to enhance the automation of its processes and communications with program participants. To the extent USAC has not already considered or is not in the process of implementing the enhancements proposed by commenters, USAC will evaluate the many suggestions put forth and take steps to implement those which are administratively feasible and within the parameters of USAC's comprehensive strategy.

Proposals for New Program Structure. Some commenters propose dramatic revisions to the structure of the program. The American Library Association proposes a structure under which FCC Form 470, FCC Form 486,[164] FCC Form 472,[165] FCC

[164] *See* Schools and Libraries Universal Service, Receipt of Services Confirmation Form, OMB 3060-0853 (August 2003) (FCC Form 486).

[165] *See* Universal Service for Schools and Libraries, Billed Entity Applicant Reimbursement Form, OMB 3060-0856 (October 1998) (FCC Form 472).

Form 473,[166] and FCC Form 474[167] would be eliminated (along with the notification letters pertinent to each).[168] Under this structure, the Commission would play no role in the technology planning process, would rely entirely on state and local procurement law, a streamlined FCC Form 471 would be used for funding requests based on multi-year contracts and would be reviewed in a streamlined manner, funding commitments would be made on an annual basis, and payments would be made directly to applicants.[169] GCI suggests that applicants (in both the Schools and Libraries program and the Rural Health Care program) be allowed "to purchase managed services through a process of competitive bidding."[170] The Florida Public Service Commission and the West Virginia Department of Education propose that the Commission allow states to administer portions of the program along with USAC under Commission oversight.[171] On-Tech suggests a three-tiered application process with different levels of USAC review for each category of service that includes a greatly simplified application and review process for priority one services.[172] SECA proposes that the Commission revamp a number of its rules to address problematic issues that have arisen in the administration of the program including eliminating FCC Form 470; eliminating the contract requirement for priority

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[166] *See* Universal Service for Schools and Libraries, Service Provider Annual Certification Form, OMB 3060-0856 (October 1998) (FCC Form 473).

[167] *See* Universal Service for Schools and Libraries, Service Provider Invoice Form, OMB 3060-0856 (October 2001) (FCC Form 474).

[168] *See* ALA Comments at 8-30.

[169] *See* ALA Comments at 11-17, 19-26.

[170] GCI Comments at 30-31.

[171] *See* Comments of Florida Public Service Commission at 3, 5-7 (Florida PSC Comments); WVDE Comments at 4.

[172] On-Tech Comments at 6.

one services under certain circumstances; modifying requirements pertaining to district-wide discounts for shared services for priority one requests; requiring USAC to approve all priority one funding requests for eligible services unless they involve waste, fraud, or abuse; requiring USAC to issue all funding commitments at least 30 days prior to the start of the funding year; reforming the manner in which priority two services are funded; and revising technology planning requirements.[173] Sprint Nextel suggests applicants simply be funded half of the cost of services on a prescribed list and that they be required to include a service provider's status as a telecommunications carrier and USF contributor among the criteria for selection.[174] As program administrator, USAC supports all changes that will increase operational efficiency and ease burdens on program participants while maintaining program integrity. USAC stands ready to implement any policy changes the Commission chooses to make.

B. Timing of USAC and Commission Processes in the Schools and Libraries Program

The Commission sought comment on how it and USAC can mitigate timing problems and reduce delays and asked whether the Commission should create new deadlines for Commission or USAC action.[175] The Commission also asked whether USAC and the Commission have adequate staff resources.[176] In response, parties describe the ways in which delayed funding commitments adversely affect applicants and

[173] SECA Comments at 16-36, 51-55, 59-62.

[174] Sprint Nextel Comments at 7-13.

[175] *NPRM*, ¶ 38.

[176] *Id.*

service providers.[177] Other commenters note that delays have the effect of deterring service providers from providing services under the program.[178] Delay also negatively affects program administration, in that it results in receipt of duplicative funding requests from year to year.[179] Some commenters propose USAC be required to comply with deadlines,[180] while others state absolute deadlines are not feasible.[181] Two commenters acknowledge reducing delays could result in increased administrative costs, which would mean less funding would be available to applicants.[182]

USAC recognizes timing is critical to applicants and service providers, and in preparation for Funding Year 2006, it has performed a comprehensive review of its PIA review procedures with a focus on streamlining procedures, eliminating redundancies, and analyzing the cost effectiveness of certain procedures.[183] In its Comments, USAC explained how the structure of the funding cycle, the annual application process,

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[177] *See* AASA/AESA Comments at 9, 13; ALA Comments at 18-19; AEWG Comments at 7; California DOE Comments at 8; CPS Comments at 15-16; EdLinc Comments at 9, 16; ESPF Comments at 6-7; GCI Comments at 4, 25-27; ISTE/CoSN Comments at 23-24; Miami-Dade Comments at 13-15; NASTD Comments at 5; NYCDOE Comments at 5; SECA Comments at 33-36; Sprint Nextel Comments at 13-14; Verizon Comments at 12; Wisconsin Dep't of Public Instruction Comments at 8; Weisiger Comments at 9.

[178] CPS Comments at 15.

[179] *See* Florida PSC Comments at 8; Miami-Dade Comments at 14; Weisiger Comments at 6-11; Wisconsin Dep't of Public Instruction Comments at 8.

[180] *See* California DOE Comments at 10; CPS comments at 16 (USAC's goal should be to make decisions on 90% of all applications by the June 1 prior to the start of the funding year); GCI Comments at 25, 27-29; HITN Comments at 4-5; ISTE/CoSN Comments at 24-25; Kellogg & Sovereign Comments at 10-11; LAUSD Comments at 2; Miami-Dade Comments at 17-18; NASTD Comments at 5; On-Tech Comments at 4-5; Qwest Comments at 18-19; Sprint Nextel Comments at 13-15, Trillion Comments at 2-3; Weisiger Comments at 12-13. *But see* Miami-Dade Comments at 13 ("[w]hile it is clearly understood that certain mitigating circumstances may prevent a certain number of applications from being processed expeditiously, these should be the exception in the future, and not the rule").

[181] *See* AEWG Comments at 7; ESPF Comments at 6; NASTD Comments at 5-6.

[182] ESPF Comments at 6-7; SECA Comments at 35.

[183] USAC Comments at 118-22.

challenges inherent in the processing of applications and invoices, and USAC's responsibility to ensure funding and disbursement decisions are consistent with program rules work together to cause delays.[184] USAC also noted that applicants, service providers and USAC together share responsibility for reducing delays.[185]

Because some delays are the result of issues outside of USAC's control,[186] USAC reiterates its suggestion that targets, rather than absolute deadlines, would be appropriate.[187] USAC also commented it has continually sought to achieve the right balance between having adequate staff to administer the Schools and Libraries program and keeping administrative costs low.[188]

USAC is acutely aware of the impact of delayed decisions, and wishes to emphasize that it is in the process of streamlining its processes to the greatest extent possible to speed administrative decisions. For example, USAC's new applicant PIN system will permit more applicants to certify online FCC Form 470, FCC Form 471, and FCC Form 486. Use of the online system by more applicants has the potential to decrease the number of paper forms and certifications significantly and eliminate thousands of paper forms that must be processed. USAC continues to explore opportunities for streamlining administrative processes and procedures.

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[184] *Id.* at 119.

[185] *Id.* at 123.

[186] ISTE/CoSN Comments at 25 (Commission needs to expedite its review of the eligible services list so that USAC could meet deadlines); WVDE Comments at 3 (lack of timely Commission policy guidance and decisions causes USAC delays).

[187] USAC Comments at 122-23.

[188] *Id.* at 124.

C. Competitive Bidding Rules

The *NPRM* asked commenters to suggest improvements to Schools and Libraries program competitive bidding rules to ensure program participants obtain the best value for USF support provided. The *NPRM* also asked whether the Commission should limit the obligation to issue a competitive bid only to applications above a particular value threshold or whether a minimum number of bids should be required.[189]

The majority of commenters oppose any new competitive bidding rules. Most commenters state the Commission should continue to rely on state and local procurement requirements rather than impose any new requirements,[190] while some commenters state the Commission should rely exclusively on state and local procurement requirements and eliminate the Commission's competitive bidding requirements, including FCC Form 470, or make FCC Form 470 optional.[191] Some commenters argue that the FCC Form 470 process has not resulted in the increased competition that it was designed to achieve.[192] A number of commenters note inconsistencies between the Commission's competitive bidding rules and state and local procurement laws[193] and contend the FCC Form 470

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[189] *NPRM*, ¶¶ 40, 90.

[190] *See* AASA/AESA Comments at 13-14; ALA Comments at 12-13, 33; CCSSO Comments at 6; CPS Comments at 18; ESPF Comments at 13; Florida PSC Comments at 9; Kellogg & Sovereign Comments at 11; LAUSD Comments at 6; NASTD Comments at 7; NEILSA Comments at 6; NREA Coalition Comments at 4.

[191] *See* Great City Schools Comments at 6; Miami-Dade Comments at 8-9; NEILSA Comments at 6; NYCDOE Comments at 6-7; On-Tech Comments at 7; WVDE Comments at 5-6; Wisconsin Dep't of Public Instruction Comments at 8-9.

[192] *See* AEWG Comments at 9; California DOE Comments at 11.

[193] *See* CPS Comments at 20; SECA Comments at 22; WVDE Comments at 5-6.

duplicates local procurement requirements.[194] The Council of Great City Schools suggests applicants be required to notify bidders of their contacts with prospective service providers, as is required by some state and local rules.[195] SECA suggests USAC's PIA review could include review of compliance with applicable state and local requirements as part of its selective review process.[196]

Most commenters oppose requiring applicants to obtain a minimum number of bids.[197] Commenters argue that it can be difficult for both small, rural applicants and for large applicants to receive multiple bids.[198] The Commission's OIG, in contrast, states the 28-day posting requirement and compliance with applicable state and local requirements "do not provide adequate assurance of a competitive procurement."[199] The OIG further states there should be a three-bid minimum requirement and deviations should only be allowed when justified.[200] Another commenter suggests a minimum of two bids should be required.[201]

USAC's experience suggests that the Commission's competitive bidding rules, and the rules requiring schools and libraries to comply with state and local procurement requirements, help achieve the Commission's goals of full and open competition resulting

[194] CPS Comments at 13.

[195] Great City Schools Comments at 6.

[196] SECA Comments at 22.

[197] *See* Wisconsin Dep't of Public Instruction Comments at 11.

[198] *See* AASA/AESA Comments at 14, 17; AEWG Comments at 11; Alaska Comments at 10; CPS Comments at 20, 27; EdLinc Comments at 21; Great City Schools Comments at 9; NATSD Comments at 7; NEILSA Comments at 8; PTSC Comments 4, 6.

[199] FCC OIG Comments at 4.

[200] *Id.* at 8.

[201] Kellogg & Sovereign Comments at 20.

in the most cost-effective use of limited program funds.[202] Requiring applicants to operate a fair and open competitive bidding process is a central tenet of the Schools and Libraries program and critical to mitigating waste, fraud, and abuse. To the extent commenters suggest eliminating the Commission's competitive bidding requirements and relying exclusively on state and local requirements, USAC anticipates several potential administrative effects. There would be no competitive bidding requirements for entities for which there are no applicable state and local rules such as private schools. If commenters did not mean to suggest eliminating this requirement across the board, but only as to entities for which there *are* applicable state and local requirements, this would result in two classes of applicants—those required to comply with state and local requirements only, and those required to comply with the Commission's requirements only. Administering two classes of applications could raise numerous administrative issues.

D. Eligible Products Database, Technology Planning and Good Samaritan Process

With respect to the Commission's request for comment on the Eligible Products Database (EPD) pilot project,[203] some commenters noted that the EPD does not provide reliable information about whether specific products and services are eligible for funding.[204] As USAC noted in its Comments, because so many goods and services are

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[202] USAC Comments at 125.

[203] *NPRM,* ¶ 40.

[204] *See* Avaya Comments at 6; CPS Comments at 18-19; Kellogg & Sovereign Comments at 11; On-Tech Comments at 7.

conditionally eligible under current program rules, program participants cannot be certain a product or service listed in the EPD will be eligible in all circumstances.[205]

In response to the Commission's request for comment on the program's technology planning requirements,[206] commenters state that USAC should not use technology plans to verify an applicant's ability to pay its share of the cost of the supported services[207] and that USAC should not deny applications based on a substantive review of a state-approved technology plan.[208] EdLinc suggests USAC develop training and technology plan models to assist applicants in learning how to develop thoughtful and comprehensive technology plans.[209] Other parties criticize the current requirements and suggest the Commission and USAC review technology plan requirements and timing.[210]

In reply, USAC wishes to clarify how budget-related information in technology plans is used in administering the Schools and Libraries program. USAC does not use the technology plan to verify that an applicant has the ability to pay its non-discount share of supported services. Other internal procedures may be used to determine an applicant's ability to support its technology development, and the technology plan may be used to complement those procedures. To the extent the Commission directs changes

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[205] USAC Comments at 133.

[206] *NPRM*, ¶ 40.

[207] *See* AEWG Comments at 10; NEILSA Comments at 7; WVDE Comments at 6-7; Wisconsin Dep't of Public Instruction Comments at 9.

[208] SECA Comments at 59.

[209] EdLinc Comments at 24.

[210] *See* CPS Comments at 19; Miami-Dade Comments at 16-17; NEILSA Comments at 7; SECA Comments at 59-62; WVDE Comments at 6; Wisconsin Dept' of Public Instruction Comments at 9.

be made to technology planning requirements and timing, USAC looks forward to working closely with the Commission on the administrative aspects of any changes.

Second, the Commission sought comment on whether the "Good Samaritan" procedure developed by USAC to reimburse applicants when the provider of service is no longer available is efficient.[211] Commenters emphatically state that USAC should pay reimbursements directly to applicants, which would eliminate the need for the Good Samaritan process.[212] USAC created the Good Samaritan process to address a serious problem. Unless the Commission concludes that payments can be made directly to applicants, this process, while not especially efficient, must remain available.[213] USAC notes that should the Commission allow direct payments to applicants, USAC would need to collect banking information from applicants as is currently collected from service providers on FCC Form 498.[214] The large number of Schools and Libraries program applicants make the systems development and outreach necessary to implement direct payment to applicants a significant undertaking requiring substantial lead time for USAC and program participants.

[211] *NPRM*, ¶ 40.

[212] *See* ALA Comments at 24-26; ESPF Comments at 10, 16; Kellogg & Sovereign Comments at 12; On-Tech Comments at 7-8; Miami-Dade Comments at 22-23; NEILSA Comments at 5; SECA Comments at 36-40; Verizon Comments at 6-9; WVDE Comments at 8, Wisconsin Dep't of Public Instruction Comments at 6, 8.

[213] *See* USAC Comments at 135-36.

[214] *See* Service Provider Identification Number and Contact Information Form, OMB 3060-0824 (undated) (FCC Form 498).

E. Schools and Libraries Program Forms

In response to paragraph 41 of the *NPRM*, BellSouth states that drastic consolidation or total elimination of existing forms is not necessary as participants have "developed processes and procedures around the existing forms, and unwarranted combinations or consolidations could provide more disruption than any superficial simplification."[215] Some commenters, however, suggest modifications to the forms, including simpler forms for priority one applications.[216] One commenter calls FCC Form 470 "too vague" and states that USAC should provide more specific guidance on the contents of requests for proposals (RFPs).[217] Some commenters argue that FCC Form 470 should be retained,[218] others state that it should be eliminated,[219] and still another states that it should be optional.[220] As USAC stated in its Comments, USAC does not suggest making forms optional because its experience suggests optional forms create confusion in the participant community.[221] Should the Commission retain FCC Form 470, USAC welcomes the opportunity to work with the Commission to provide guidance to program participants responsive to the issues they have articulated here.

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[215] BellSouth Comments at 7.

[216] *See* California DOE Comments at 10; ESPF Comments at 12-13; Miami-Dade Comments at 12; NEILSA Comments at 2-3; Verizon Comments at 16.

[217] California DOE Comments at 11.

[218] *See* ESPF Comments at 9; Kellogg & Sovereign Comments at 12.

[219] *See* CPS Comments at 20-21; CCSSO Comments at 6; NYCDOE Comments at 6; On-Tech Comments at 8.

[220] Miami-Dade Comments at 8-9, 12.

[221] USAC Comments at 109, 143.

A number of commenters suggest eliminating FCC Form 486 and moving its certifications to the FCC Form 471, FCC Form 472, FCC Form 473 and/or FCC Form 500.[222] FCC Form 486 plays an important role in the current design of the program by preventing disbursements to service providers where goods and services have yet to be provided and ensuring compliance with the Children's Internet Protection Act (CIPA)[223] and the Commission's technology planning requirements.[224]

Commenters put forth numerous suggestions regarding the service provider and invoicing forms, FCC Form 472, FCC Form 473 and FCC Form 474.[225] A recurring

[222] *See* ALA Comments at 20; ESPF Comments at 9-10; Kellogg & Sovereign Comments at 12-13; Miami-Dade Comments at 13; On-Tech Comments at 8. *See* Universal Service Schools and Libraries, Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form, OMB 3060-0853 (April 2000) (FCC Form 500).

[223] Congress included CIPA as part of the Consolidated Appropriations Act, 2001, Pub. L. No. 106-554. Section 1721 of CIPA amended section 254(h) of the 1996 Act. Section 1721 references section 1732 of the Children's Internet Protection Act, which amends section 254 of the 1996 Act by adding a new subsection (l) at the end of section 254. CIPA is codified at 47 U.S.C. §§ 254(h), (l).

[224] USAC Comments at 140-41.

[225] *See* Comments of AT&T at 2-4 (move the service provider certification on FCC Form 472 to FCC Form 473 so that service providers will not have to make a certification on that form each time FCC Form 472 is submitted) (AT&T Comments); Avaya Comments at 4 (applicants should be required to sign off on each FCC Form 474); CPS Comments at 30 (FCC Form 474 should require an applicant counter signature and should include a checkbox to indicate whether the form represents payment in full for a funding Request Number (FRN) so that funds could be rolled over on that basis rather than the applicant needing to submit FCC Form 500); ESPF Comments at 10 (modify FCC Form 472 to include the applicant's mailing address); Great City Schools Comments at 6-7 (either eliminate FCC Form 474 or require a joint sign-off, modify FCC Form 474 to require an itemized list of goods and services delivered and to include the amount actually paid by the applicant, require the applicant to sign the form within 30 days, but if the applicant did not do so, the service provider could submit the form to USAC for payment); Kellogg & Sovereign Comments at 14 (FCC Form 472 should be modified so that the Billed Entity Applicant can indicate where the payment should be sent, form should be scanned and submitted electronically); Miami-Dade Comments at 10, 12-13, 23 (FCC Form 474 should be eliminated and FCC Form 472 should be the only invoicing form, the refund amount should be specified, service providers should be required to certify that all services and equipment for which they are seeking payment "have been delivered and are operational," include itemized information about both eligible and ineligible products and services, and applicant acknowledgment of the accuracy of the information on the form); On-Tech Comments at 8 (FCC Form 472 and FCC Form 474 should be combined and certifications from both applicants and service providers required for all invoices); SBC Comments at Attachment 1 (SBC incorporated into its comments its specific comments related to proposed revisions to these forms filed with the Commission in March 2005);

theme is that applicants should play a greater role in the invoicing process, including having applicants approve the amounts requested and verify that the goods and services for which payment is being sought have been delivered. USAC supports suggestions that applicants play a role in submission of FCC Form 474. Since 2003, USAC has offered applicants the ability to request an "invoice check" before USAC will disburse funds to their service providers. This check allows applicants to review their portion of an FCC Form 474 submitted by service providers seeking payment for internal connections goods and services before payments are disbursed to those service providers. However, to the extent applicant involvement would be required on the forms, this involvement should be required, not optional as suggested by one commenter.[226] USAC agrees with suggestions to revise forms for ease of use such as, for example, adding additional applicant contact information to FCC Form 472, and USAC looks forward to working with the Commission to implement such changes. To the extent forms are revised to collect additional data, USAC would need to ensure its systems would be able to handle the additional data. In addition, USAC's continued transition to electronic transactions will result in greater program efficiencies.

One commenter proposes modifying FCC Form 473 to permit updates of service provider contact information so that service providers do not have to submit revised FCC Form 498s.[227] USAC will continue to explore linking contact information and the

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Trillion Comments at 6 (FCC Form 474 should be modified to include detailed information about the service provider's bill to its customer and should require a certification by the service provider).

[226] *See* Great City Schools Comments at 7.

[227] ESPF Comments at 11.

electronic submission and updating of contact information with the goal of reducing the administrative burden on service providers while maintaining flexibility for companies to structure their points of interaction with USAC to best meet their business needs. USAC notes that the new FCC Form 498 electronic certification now makes it easier for service providers to maintain and update their contact information.

With respect to FCC Form 500, one commenter suggests the Commission clarify whether this form is ever required to be submitted, noting that USAC audits indicate when applicants do not submit FCC Form 500.[228] Commenters also suggest expanding the number of transactions that are communicated with this form.[229] As USAC commented, it is analyzing whether to recommend significant revisions to FCC Form 500, and commenters support many of the revisions currently under consideration by USAC.[230]

One commenter proposes combining FCC Form 479[231] and the Letters of Agency required for consortium applicants into one form.[232] Combining FCC Form 479 and the Letter of Agency would require applicants to be compliant with the Children's Internet Protection Act (CIPA) at the time they submit FCC Form 471 rather than at the start of service as required by the Commission's rules.[233] USAC's experience suggests that

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[228] ESPF Comments at 11.

[229] *See* Miami-Dade Comments at 13, 27; CPS Comments at 31; Great City Schools Comments at 7; LAUSD at 4.

[230] USAC Comments at 141.

[231] Schools and Libraries Universal Service, Certification by Administrative Authority to Billed Entity of Compliance with the Children's Internet Protection Act, OMB 3060-0853 (August 2003) (FCC Form 479).

[232] SECA Comments at 56-59.

[233] 47 C.F.R. § 54.520(c).

while this might not be a problem for applicants who have participated in the program for some time and therefore already are CIPA-compliant, it could present a barrier to entry for new applicants because they may need the additional time to become CIPA compliant.

USAC will continue to review program forms on an annual basis with program participants and the Commission to assess their continued usefulness and the potential for streamlining information requirements.

F. Timing of Schools and Libraries Program Application Cycle

In paragraph 42 of the *NPRM* the Commission sought comment on whether it should synchronize the application and disbursement process with the planning and budget cycles of schools and libraries participating in the program. Commenters disagree about whether the cycle is attuned to applicants' planning and budget cycles.[234] Several commenters state that the Commission and USAC should stabilize the timing of the various components of the application process—that the forms should become available at the same time each year, and the window should open at the same time each year and remain open for the same length of time each year.[235] For example, deadlines for forms

[234] *See* AEWG Comments at 13 (timing of the Schools and Libraries program process requires applicants "to file at least six months in advance of the earliest delivery of service, and sometimes 24 months in advance of the receipt of services"); BellSouth Comments at 8 (better synchronization "should result in less cost and fewer program inefficiencies"); California DOE Comments at 12 (budgets are not approved at the time the funding requests are submitted); Kellogg & Sovereign Comments at 14-15 (current application cycle would work well but for delayed decisions); Miami-Dade Comments at 15-16 (application and disbursement process could be better synchronized); Florida PSC Comments at 7-8 (bifurcated cycle would be better synchronized with applicants' budget cycles); LAUSD Comments at 4 (budgets are not approved at the time funding requests are submitted); On-Tech Comments at 8 (applicants do not have final budgets in place at the time they are required to make the necessary resources certification).

[235] *See* AASA/AESA Comments at 9-10; CPS Comments at 21; EdLinc Comments at 9-10.

such as FCC Form 486 should be set rather than based on the date of the Funding Commitment Decision Letter (FCDL), or that USAC should send e-mail reminders to applicants as deadlines approach.[236]

USAC agrees that predictable, fixed dates for issuance of program application forms, release of the Eligible Services List, and the filing window could benefit program participants and increase efficiency in application processing. The Commission's rules authorize USAC to implement a filing window each year[237] and provide that the Commission shall release the Eligible Services List at least 60 days prior to the opening of the window.[238] USAC's experience suggests that predictability could be achieved in a variety of ways. For example, USAC could post on its website an expected window opening and closing time frame as early as possible and make every attempt to make minimal changes in the timing. USAC does not believe that codifying the opening and closing date in Commission regulations would be prudent because codification would limit USAC's flexibility to adjust the window in response to changing situations. USAC's experience has been that such adjustments have been necessary in past funding years.

Additionally, USAC's experience suggests that multiple windows for requests for different priority services as some commenters propose could create operational

[236] *See* AASA/AESA Comments at 10; EdLinc Comments at 9-10.

[237] 47 C.F.R. § 54.507(c).

[238] 47 C.F.R. § 54.522. The Commission issued the Eligible Services List for Funding Year 2006 on November 22, 2005, and on the same date waived the 60-day requirement. *See* Release of Funding Year 2006 Eligible Services List for Schools and Libraries Universal Service Mechanism, CC Docket No. 02-6, Public Notice, FCC 05-197 (Nov. 22, 2005). The filing window for Funding Year 2006 opened on December 6, 2005.

challenges. Under current rules, USAC would still need to determine overall program demand for a funding year, so no funding decisions could be made until the last filing window closed and availability of funds was known. However, if multiple filing windows were established, USAC could, for example, calculate priority one demand before opening the priority two window should the Commission so direct.

At this time, USAC does not believe it would be prudent to codify all deadlines because this could result in inequitable treatment of program participants. For example, different FCDL dates can result in different deadlines for receipt of services; if a single deadline were set for receiving services, recipients of later FCDLs could be disadvantaged.

(ii) High Cost Program

A. Reducing Burden on Program Participants

Several commenters suggest changes to data filing requirements in response to the Commission's request for comments on ways to increase participation in the High Cost program by reducing or eliminating administrative burdens on carriers.[239] Sprint Nextel proposes that carriers be allowed to file one set of line count data for a given time period (quarterly) on a single form.[240] USAC is developing a bulk upload function for competitive eligible telecommunication carriers (CETCs) consistent with FCC Form 525[241] that would enable CETCs with multiple Study Area Codes (SACs) to file all

[239] *NPRM*, ¶ 46.

[240] Sprint Nextel Comments at 16-17.

[241] *See* Competitive Carrier Line Count Report, OMB 3060-0986 (June 2005) (FCC Form 525).

quarterly data in a single filing. NECA recommends that certifications be simplified through consolidating processes and electronic signatures.[242] USAC is working on enhanced electronic transaction capabilities in the High Cost program that will address carrier requests for simpler filing and more detailed reporting. USAC supports Commission efforts that reduce administrative burdens on program participants and USAC.

B. High Cost Loop Support

USAC's Comments concerning administration of the High Cost Loop (HCL) component of the High Cost program[243] recommended that NECA continue to collect data as it currently does pursuant to 47 C.F.R. Part 36 and continue to act as agent for carriers by submitting the data to USAC.[244] USAC, in turn, would calculate and distribute HCL support.[245] Presently, NECA performs the support calculations and USAC disburses program funds. USAC's assumption of Part 36, Subpart F calculations contemplates NECA collecting and providing to USAC all Incumbent Local Exchange Carrier (ILEC) data necessary for USAC to determine USF demand projections and support disbursements. NECA-provided data will enable USAC to determine the HCL annual cap, HCL expense adjustments, Safety Net Support (SNS) and Safety Valve Support (SVS).

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[242] NECA Comments at 17.

[243] *NPRM*, ¶ 48-49.

[244] *See* USAC Comments at 152-55.

[245] *Id.*

Presently, Commission rules require each ILEC to submit the data specified in 47 C.F.R. § 36.611 to NECA annually. ILECS may also update submitted data during the year pursuant to 47 C.F.R. § 36.612. Under existing rules and current NECA practices, ILEC data is collected on or before the dates specified in the rules, and the data is then subject to review by NECA, often resulting in data revisions after the filing dates listed above. For projections, USAC receives preliminary data from NECA no more than eight business days after each of the dates listed above. USAC receives finalized data one month before making disbursements. USAC contemplates that NECA will continue to use its expertise and resources to finalize the data collection and that the required ILEC data will be transmitted to USAC by NECA in a manner that enables USAC to calculate support and make timely payments to recipients. In addition, USAC contemplates that, similar to Interstate Common Line Support (ICLS), a carrier would need to sign an agency certification for NECA to submit the Part 36 information to USAC on its behalf.[246]

Upon receipt of NECA-collected data consistent with existing data collection requirements, USAC will be responsible for calculating the non-rural and rural portions of the nationwide loop cost expense adjustments, the rural growth factor, study area total unseparated loop costs, national and study area average loop costs (NACPLs and

[246] *See generally Federal-State Joint Board on Universal Service*, CC Docket 96-45, First Order on Reconsideration in CC Docket 00-256, Twenty-Fourth Order on Reconsideration in CC Docket 96-45, Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, 17 FCC Rcd 5635 (2002).

SACPLs), and carrier specific expense adjustments.[247] USAC will also be responsible for monitoring the annual cap on HCL support.

This approach would ensure administrative neutrality and independence in HCL data calculations. Additionally, USAC would be able to determine the annual HCL cap and monthly expense adjustments more efficiently while monitoring and ensuring the HCL cap is not exceeded, which would result in better USF monitoring and management.

(iii)Low Income Program

The Commission sought comment on the information obtained on Low Income program forms, frequency of form submission, certifications made on the forms, and whether additional or modified forms are necessary to protect against waste, fraud, and abuse.[248] BellSouth and Qwest recommended revising FCC Form 497[249] to allow carriers to report the total number of Low Income program subscribers in service at the end of the month, the actual dollar amount of Lifeline support provided, and to eliminate partial month reporting. [250] USAC agrees that FCC Form 497 should be revised to allow carriers to satisfy the requirement that they certify compliance with income certification procedures.[251] In addition, USAC recommends that the form be amended to require competitive Eligible Telcommunications Carriers (ETCs) to list the name of the incumbent and the exchanges in which it is providing Lifeline service so USAC can

[247] USAC already calculates Safety Net Additive support consistent with 47 C.F.R. § 36.605 based on NECA-provided data.

[248] *NPRM*, ¶¶ 55-56.

[249] Lifeline and Link-Up Worksheet, OMB 3060-0819 (October 2000) (FCC Form 497).

[250] BellSouth Comments at 14-15; Qwest Comments at 30.

[251] *See* 47 C.F.R. §§ 54.410(b)(1)-(2).

verify the company is receiving support only in exchanges in which it has been designated as an ETC. USAC also recommends that FCC Form 497 require carriers that receive Tier 4 support for serving tribal lands to identify the specific tribal lands or reservations they are serving.

With regard to partial month reporting, USAC favors the adoption of one easy-to-understand method for all companies. The Commission could choose to eliminate partial month reporting by having companies simply report the number of Lifeline customers they serve as of a particular date each month. Qwest argues that there is no need to pro-rate because the number of customers who add Lifeline generally equals the number of customers who terminate Lifeline, and "add and drop activity within a given month tends to equal out."[252] If this approach is adopted, the support calculation would have to equal the number of subscribers as of that date, multiplied by the appropriate dollar amount for each component of the Low Income program.

Under current rules, companies should not, however, be allowed to claim support that does not correspond to a specific number of subscribers, as advocated by BellSouth.[253] The Commission's rules on reimbursement are clear that support paid must correspond to discounts provided to specific subscribers, and USAC administers the program consistent with those rules.[254] In order to prevent abuse, the amount of support

[252] Qwest Comments at 30.

[253] BellSouth Comments at 14-15.

[254] *See* 47 C.F.R. § 54.407(a) ("Universal service support for providing Lifeline shall be provided directly to the eligible telecommunications carrier, based on the number of qualifying low-income consumers it serves."); 47 C.F.R. § 54.407(b) ("The eligible telecommunications carrier may receive universal service support reimbursement for each qualifying low-income consumer served.").

claimed must be derived from the number of Lifeline subscribers reported. Companies should not be allowed to “back in” to their support claim by claiming reimbursement for the amount of Lifeline discounts they provided when this amount cannot be traced to the number of Lifeline subscribers reported. That could create administrative issues, and auditors must retain the ability to match the number of Lifeline subscribers served to the amount of support claimed by a company to ensure the company is not claiming more support than it is entitled to claim.

Carriers report the number of Lifeline and Link-Up customers served for each tier of support on FCC Form 497, which must be submitted quarterly. The Commission asked whether annual or semi-annual filing of FCC Form 497 should be adopted.[255] Currently 63% of participating companies file forms on a monthly basis.[256] The more frequently a company files FCC Form 497, the less likely it is to have large true-ups or negative disbursements.[257] USAC recommends that the Commission mandate monthly filing.

Qwest commented that the Low Income program projection process should be revised to reduce the likelihood of negative disbursements.[258] As discussed in USAC’s Comments, USAC trues-up the difference between its projection of support owed to a company and the company’s actual support claim as soon as the company submits its

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[255] *NPRM,* ¶ 56.

[256] BellSouth and Qwest comment that carriers should be allowed to report monthly. BellSouth Comments at 15; Qwest Comments at 30.

[257] USAC Comments at 167.

[258] Qwest Comments at 32; *see NPRM,* ¶ 62.

actual claim on FCC Form 497.[259] Therefore, companies that file monthly are less likely to have a large true-up or a negative disbursement. In addition, USAC has the ability to adjust the automatically calculated projection for a particular company if it believes the projection is inaccurate. For example, a new ETC may have a steep growth in Lifeline subscribers during the first few months it is offering Lifeline service, which at some point will level off. In that situation, USAC can adjust projections so a company is not paid a large amount of support that must be recovered when the company files its FCC Form 497. If it appears that a projection is out of line with a company's likely actual support claim, USAC generally contacts the company to discuss whether, for example, the company anticipates the growth in its Lifeline support will continue at the pace reflected in the projection.

In order to eliminate negative disbursements, USAC would need to change the manner in which it calculates support by eliminating the projection process.[260] Companies could be paid based on their actual support claims, but if a company failed to submit FCC Form 497 for a particular month, it would not receive a disbursement for that month. As an alternative, mandating monthly filing would permit USAC to true-up projections against actual support claims. Monthly filing, coupled with USAC's ability to adjust projections that appear to be out of line, appears to be the most effective way to reduce the possibility of negative disbursements without eliminating payments based on projections.

[259] USAC Comments at 189-92.

[260] USAC Comments at 189-92.

In addition, the Commission should consider codifying or otherwise recognizing USAC establishing March 31 as the deadline for filing support claims[261] and USAC's practice of recovering Low Income support found to have been claimed in error. Audits and data validations have frequently revealed errors that a company has been making for many months. To preserve the integrity of the USF, USAC should continue to recover the support that was paid due to a company's error.

Finally, the Commission asked whether High Cost and Low Income program disbursements should be combined into a single disbursement method.[262] USAC commented they should not.[263] Verizon agrees, commenting that support for these programs should not be combined because High Cost support is provided to support carrier networks while Low Income support is provided on a per-customer basis and passed through to the customer.[264] There are no benefits to combining disbursements for these two distinct programs and doing so could lead to waste, fraud, and abuse.[265] Companies wishing to receive a single payment for their High Cost and Low Income support can elect to have both payments sent to a single account.

[261] March 31 is the deadline each year for filing support claims two years prior to the current year. For example, March 31, 2005 was the deadline for submitting new or revised support claims for 2003 or earlier. After March 31, 2005, carriers are permitted to file support claims only for 2004 and 2005.

[262] *NPRM*, ¶ 60.

[263] USAC Comments at 181.

[264] Verizon Comments at 29.

[265] *See Id.*

(iv) Rural Health Care Program

GCI suggests USAC issue funding commitments before the start of each funding year.[266] Otherwise, GCI notes, service providers are "put in the position of providing services on the assumption that their customers will be able to pay."[267] USAC strives to process applications as quickly as possible. In USAC's experience, however, few applicants submit FCC Form 465[268] or FCC Form 466-A[269] before the start of the funding year regardless of how far in advance USAC allows applicants to submit applications. For Funding Years 1999 to 2004, only 1% of applicants applied more than a month before the funding year started and only 28% had applied by mid-year. Almost 40% applied less than a month before the end of the funding year, meaning even if USAC issued commitments within a month of receipt, few commitments could be issued before the year started and many would be at or after year end. Additionally, many applicants omit supporting documents such as bills, contracts, bids, or network diagrams, and USAC must obtain these documents, which can delay processing.

GCI also suggests adding flexibility by establishing a maximum support amount rather than basing the program on precise support amounts.[270] GCI states this would

[266] *See* GCI Comments at 25; *see also NPRM*, ¶ 57-58.

[267] GCI Comments at 26.

[268] *See* FCC Form 465; Health Care Providers Universal Service, Funding Request and Certification Form, OMB 3060-0804 (January 2005) (FCC Form 465).

[269] *See* Health Care Providers Universal Service, Internet Service Funding Request and Certification Form (And Advanced Services Funding Request and Certification for Entirely Rural States), OMB 3060-0804 (January 2005) (FCC Form 466-A).

[270] *See* GCI Comments at 24 ("Under this approach, USAC would approve contracts for their term at a maximum amount and require reapplication only for increases in funding or significant changes in services received, reducing the administrative burden on both applicants and USAC.").

alleviate the requirement for reapplying when the cost is less than the amount approved.[271] In USAC's experience, the cost for services tends to be static, making reapplication to decrease amounts fairly infrequent. GCI also proposes consolidated groups, such as an entire health system, submitting a single application for services.[272] This approach is contrary to the maximum allowable distance (MAD) requirement currently specified by the program's rules.[273] For truly indivisible shared services, the Commission's rules do permit single applications, with services apportioned to each eligible applicant as explained in "safe harbor" examples of allocation methods.[274]

Several commenters recommend increased automation in the program.[275] One commenter suggests applicants be allowed to resubmit data from prior applications previously reviewed.[276] USAC's Comments described its extensive automation efforts and reiterates that forms are currently pre-populated with applicant information.[277] Those areas not pre-populated require manual entry for quality assurance and program

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[271] *See* GCI Comments at 24.

[272] *See id.* at 22-23.

[273] *See* USAC Comments, Appendix A at 49. The maximum allowable distance (MAD) is the distance from the health care provider to the far side of the largest city in the provider's state. *See* 47 C.F.R. § 54.601(c)(1).

[274] *See Rural Health Care Support Mechanism,* WC Docket 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24571-72, ¶ 50 (2003) (*RHC First Order*) (allowing for allocation of a T-3 shared with the rest of a hospital).

[275] *See, e.g.,* BellSouth Comments at 15-16; GCI Comments at 20-21; Qwest Comments at 31.

[276] *See* GCI Comments at 23.

[277] *See* USAC Comments at 177-79.

integrity reasons. USAC supports the continuing trend toward full automation in the Rural Health Care program application and invoicing process.[278]

Commenters, including USAC, support a multi-year Rural Health Care program application process.[279] Assuming issues created by application of the federal Antideficiency Act to the USF are appropriately addressed,[280] a two-year application cycle is administratively desirable because it appropriately balances administrative efficiency, reduction of applicant burden, and program integrity concerns.[281]

With respect to Rural Health Care program forms,[282] Qwest agrees with USAC that the forms are up-to-date and do not require further changes at this time.[283] Qwest also states, however, that Rural Health Care providers should be required to have a technology plan to protect against "gold plating."[284] USAC believes additional forms or certifications are not necessary at this time.[285]

GCI states appeals decisions should be made by a different staff person than the one who made the original decision and claims "the USAC process does not observe this basic principle of appellate review."[286] In fact, under procedures approved by the USAC

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[278] *See* USAC Comments at 177.

[279] *See, e.g.,*CTIA Comments at 13-14; Qwest Comments at 30-31; USAC Comments at 173-75.

[280] *See* above at 33 n.122.

[281] *See* USAC Comments at 173-75.

[282] *See NPRM*, ¶ 58-59.

[283] *See* USAC Comments at 172, 179; Qwest Comments at 31 ("changes to Form 465 and 466 are not necessary and will only add new burdens and complexity to the process").

[284] *See* Qwest Comments at 41.

[285] *See* USAC Comments at 173, 179.

[286] GCI Comments at 29.

Board of Directors, a team of senior USAC management not involved in original decisions reviews Rural Health Care program appeals.

b. USF Disbursements

(i) Schools and Libraries Program Disbursements

The Commission sought comment on whether additional procedures are required to help effectuate the Schools and Libraries program carryover rules to ensure full use of the $2.25 billion annual funding cap.[287] Commenters note the Commission has been slow to roll over funds[288] and that unused funds should be rolled over into the current funding year so that they are available to all beneficiaries on an equitable basis.[289] Specifying administrative deadlines for requesting extensions of time to invoice USAC would allow USAC to close out each funding year in a timely manner. Moreover, the Commission could authorize USAC to roll over any unspent funds into the current year rather than requiring express Commission approval.[290]

The Commission also sought comment on whether to adopt criteria or provide guidance for review of Schools and Libraries program invoices.[291] Most commenters state that USAC needs to make payments faster and some suggest providing more information to service providers during the invoice review process.[292] Many commenters

[287] *NPRM*, ¶ 60.

[288] AASA/AESA Comments at 14-15.

[289] EdLinc Comments at 18.

[290] USAC Comments at 181-82.

[291] *NPRM*, ¶ 60.

[292] *See* Comments of Avaya, Inc. at 2-5 (Avaya Comments); CPS Comments at 22; Great City Schools Comments at 7; ESPF Comments at 18-19.

suggest that USAC achieve faster payments by establishing performance targets or deadlines.[293] Noting that a reasonable time period for processing invoices is 45 to 60 days, Avaya suggests that USAC publish expected time frames for processing invoices to enable service providers to plan accordingly.[294] Stating that delays are often caused by USAC documentation requests as part of certain invoice reviews,[295] commenters suggest enhancements to USAC's invoice review processes, including addressing duplicative reviews performed during initial review of the application and enhancements to help avoid requesting duplicative documentation.[296] Some commenters support the Commission providing guidance for USAC's review of invoices.[297] Chicago Public Schools states while "there is a great deal of room for improvement," within the last year USAC had made significant improvements in the process over the previous year.[298]

The E-Rate Service Provider Forum states that USAC's decisions to pay invoices need to be made in compliance with the Commission's guidance in the *Schools and Libraries Fourth Order*.[299] Trillion Partners Inc. states that USAC should not perform invoicing reviews, but that there could be "random spot audits."[300] The California Department of Education states that USAC should not be able to deny payments as a

[293] *See* California DOE Comments at 14; ESPF Comments at 17-18; Trillion Comments at 6.

[294] Avaya Comments at 2-5.

[295] CPS Comments at 22.

[296] *See* CPS Comments at 22; ESPF Comments at 18-19.

[297] *See* CPS Comments at 22; Weisiger Comments at 11.

[298] CPS Comments at 22.

[299] ESPF Comments at 17-18.

[300] Trillion Comments at 6.

result of invoice reviews.[301] USAC's experience is that this would open the door to significant abuse. USAC, the Commission, the Government Accountability Office (GAO) and others have all recognized the need for invoice reviews to ensure disbursements are appropriate. To the extent commenters suggest USAC not review invoices or not deny payments that are inconsistent with program rules, these suggestions are inconsistent with USAC's responsibilities as administrator of the universal service programs.

In response to the suggestions that USAC provide online invoice status information, [302] USAC plans to implement a status tool for invoices within the next twelve months.[303]

Qwest states that USAC has disbursed funds in response to FCC Form 472s "to which Qwest was entitled" to a different service provider, and that USAC did not take steps to remedy the situation.[304] USAC notes that its systems allow payment to be made only to the unique SPIN associated with each Funding Request Number (FRN), and the service provider must pay funds remitted in response to FCC Form 472 to the applicant.

USAC recognizes the need to issue disbursements in a timely manner.[305] Even though USAC has significantly improved the percentage of invoice lines that are paid

[301] California DOE Comments at 14.

[302] *See* Avaya Comments at 2-5; ESPF Comments at 19; Trillion Comments at 7.

[303] USAC Comments at 111.

[304] Qwest Comments at 39.

[305] USAC Comments at 184-86.

within 30 days, USAC agrees that further improvement is needed and is continuing to address this issue.

(ii) High Cost Program Disbursements

High Cost program disbursements require collecting data, calculating and validating disbursement amounts, and finalizing disbursements for approximately 1,700 ETCs (including incumbents and competitors) each month.[306] A number of High Cost program beneficiaries commented on the transparency of support calculations and data collection requirements, with several commenters stating generally that USAC support calculation procedures are not well understood and information on support to be provided is not clear.[307] In addition, commenters state that USAC procedures for calculating support and eligibility for support do not seem consistent, USAC does not provide advance notice when it changes a beneficiary's support payments,[308] and thorough explanations of disbursement changes are not provided.[309] USAC is required to change support amounts based on underlying incumbent LEC support revisions, certification issues, and eligibility issues. USAC agrees that it should improve processes and notice given to recipients. High Cost program beneficiaries receive little in the way of supporting detail for payment information below the component and study area code (SAC) level. USAC does not currently have the information systems in place to provide more detailed information. As part of its enterprise strategy, USAC has initiated

[306] *Id.* at 187.

[307] *See* Centennial Comments at 2-3; CTIA Comments at 6; Dobson Cellular Comments at 6-7.

[308] *See* Centennial Comments at 8; CenturyTel Comments at 7-9; NECA Comments at 18-21.

[309] Qwest Comments at 31-32; USTA Comments at 8.

processes to enhance its information technology systems for the High Cost program to improve system efficiencies and provide support transparency to recipients.

Centennial Communications observes that USAC procedures for calculating support are not clear, that Local Switching Support (LSS) and Incumbent Common Line Support (ICLS) data collected should be made public, and that disaggregation maps on the USAC website are not helpful.[310] Generally, publication of LSS and ICLS data is determined by the Commission. USAC agrees that disaggregation maps are not useful to competitive carriers working to submit lines in disaggregated areas. Articulating clear standards for maps would improve administrative efficiency and program transparency. USAC can provide disaggregation plans at the zone name level (often the wire center name) to assist CETCs in mapping lines appropriately.

GCI commented that more information should be made publicly available on ILEC submissions in support of embedded cost-based High Cost support, and USAC should provide all support recipients a complete and detailed accounting of the support paid.[311] ILEC High Cost support information is available on the FCC website in the area where NECA files USF study results.[312]

In addition, several commenters state that competitive eligible telecommunications carrier (CETC) support payments for each month in a quarter should be the same but rarely are, USAC makes informal true-ups during the year, and USAC

[310] Centennial Comments at 4-9.

[311] GCI Comments at 34-36.

[312] *See* http://www.fcc.gov/wcb/iatd/neca.html.

calculates SVS and LSS incorrectly.[313] High Cost Model support rules result in disbursements differing from projections for non-rural carriers. All lines reported are factored into High Cost Model projections, but upon disbursement, only eligible carrier line counts are used in payments. Because the line counts of all carriers are used to determine support available in the state and to each specific carrier, any change in the lines for a given quarter will cause payments to differ from projected support. Line revisions for prior periods will also change payments. USAC's calculation of LSS is limited by the data collection form LSSc that requires use of the 1996 dial equipment minutes (DEM) weighting factor. USAC's initial Comments suggested that the LSSc form be revised to collect current year unweighted DEM information.[314] USAC calculates SVS correctly as required by the Commission's rules.[315] USAC has sought clarification from the Commission to clearly establish the national average cost per loop (NACPL) to be used in SVS calculation to preclude prospective appeals based on NACPL use in SVS.[316]

GVNW Consulting asserts that it is not competitively neutral for ILEC support to appear on the USAC website on a study area basis while CETC data is provided on a statewide basis.[317] On the USAC website, all support is published for ETCs at the Study

[313] *See* BellSouth Comments at 16; Centennial Comments at 4-5; GVNW Comments at 7-11.

[314] USAC Comments at 158-59.

[315] *Id.* at 154.

[316] *Id.*

[317] GVNW Comments at 14.

Area Code (SAC) level regardless of whether the entity is an ILEC or CETC. Also, support for ILECs and CETCs is rolled up to the area served within a state.

BellSouth commented that USAC should post monthly disbursements no later than five business days prior to the end of the month and remittances should be sent electronically on the last day of the month.[318] BellSouth did not support establishing "a single uniform system for disbursing universal service funds."[319] USAC's current practice is to issue one payment on the next to the last day of each month, generally by electronic transfer, for each carrier for all payments for which it is eligible.[320] The disbursement amount is posted on USAC's website approximately five days before disbursement, which is the carrier's notification of the disbursement amount.[321] Although a desirable goal, given the large volumes of data that must be processed each month to determine and make High Cost program beneficiary payments, it is not feasible under USAC's existing financial systems, for USAC to make payments earlier in the month.

In response to the Commission's question whether, as part of the true-up process, carriers should pay interest on the difference between projected and actual amounts if the projected amounts exceed actual amounts,[322] OPASTCO and WTA comment that rural

[318] BellSouth Comments at 16-17.

[319] *Id.* at 16.

[320] USAC Comments at 187.

[321] *Id.*

[322] *NPRM*, ¶ 61.

carriers should not have to pay interest on over-payments based on their projections.[323] NTCA believes that interest payments should be imposed.[324] USAC reiterates its recommendation that carriers should pay interest on excess support paid as a result of carrier submitted overprojections.[325]

(iii)Low Income Program Disbursements

As discussed above in the section on High Cost program disbursements, BellSouth commented that USAC should post monthly disbursements no later than five business days prior to the end of the month and remittances should be sent electronically on the last day of the month.[326] BellSouth did not support establishing "a single uniform system for disbursing universal service funds."[327] USAC's current practice is to issue one payment on the next to the last day of each month, generally by electronic transfer, for each carrier for all payments for which it is eligible.[328] The disbursement amount is posted on USAC's website approximately five days before disbursement, which is the carrier's notification of the disbursement amount.[329] Although a desirable goal, given the large volumes of data that must be processed each month to determine and make Low Income program beneficiary payments, it is not feasible under USAC's existing financial systems, for USAC to make payments earlier in the month.

[323] OPASTCO/WTA Comments at 14.

[324] NTCA Comments at 9.

[325] USAC Comments at 189.

[326] BellSouth Comments at 16-17.

[327] *Id.* at 16.

[328] USAC Comments at 187.

[329] *Id.*

In paragraph 60 of the *NPRM* the Commission again asks whether a single uniform system for disbursing USF should be established, and whether such a single disbursement method is feasible given the many differences in the USF programs.[330] As stated above, USAC concurs with Verizon's view that High Cost and Low Income program disbursements should not be combined in light of the distinct requirements of each program.[331]

(iv)Rural Health Care Program Disbursements

In its Comments, USAC stated the Commission may wish to consider the feasibility of disbursing Rural Health Care program support directly to applicants.[332] Qwest states paying amounts to the applicants directly would be more efficient than the current process.[333]

c. USF Contributions Process

In paragraph 65 of the *NPRM* the Commission sought comment regarding whether to adopt rules clarifying or improving the contributions process.[334] Qwest commented that USAC's treatment of mergers causes an inequitable assessment of universal service obligations.[335] Qwest states that in billing the successor corporation

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330 *NPRM*, ¶ 60.

331 Verizon Comments at 29; *see* USAC Comments at 181.

332 *See* USAC Comments at 195-96; *see also NPRM*, ¶ 64.

333 *See* Qwest Comments at 32.

334 Following is a correction to USAC's Comments, Appendix A at 9, 50-51: In the Schools and Libraries program, contributors who are also service providers may decide to receive direct disbursements from USAC or offset disbursements against their contribution obligations. *See* 47 C.F.R. §54.515. In the Rural Health Care program, contributors who are also service providers automatically have disbursements offset against their contribution factor. *See* 47 C.F.R. §54.611.

335 Qwest Comments at 34.

USAC ignores the contributions of the non-surviving corporation, requires the successor to wait a substantial time for a refund for payment of excess contributions covered by the merger, and applies the highest quarterly contribution factor for the year in calculating the combined entity's true-up.[336] Qwest's comments do not accurately describe USAC's treatment of merged companies as required by the instructions to FCC Form 499, which state as follows:

> Filers should not file revised revenue information to reflect mergers, acquisitions, or sales of operating units. In the event that a filer that submitted a Form 499-A no longer exists, the successor company to the contributor's assets or operations is responsible for continuing to make assessed contribution or true-up payments, if any, for the funding period and must notify the Form 499 Data Collection Agent. If the operations of an entity ceased during the previous calendar year and are now part of a successor, the successor must include the previous calendar year revenues of the now-defunct entity with its own Worksheet. Otherwise, the defunct entity must file its own Worksheet. The entity that ceased operations may owe additional universal service contributions or may be due refunds, depending on how its FCC Form 499-A Worksheet compares to previously filed FCC Form 499-Q Worksheets.[337]

When two contributors merge, the successor typically files the next due FCC Form 499-A reporting the combined revenue of the merged companies. Assuming USAC was timely notified of the business event, this form is then trued-up against the combined FCC Form 499-Q filings from the previous year. In this way, the surviving company will be billed any adjustments or receive any credits arising out of a true-up of

[336] *See* Qwest Comments at 34.

[337] FCC Form 499-A Instructions at 12.

the combined revenue of both companies. In the typical situation, there is no need for the surviving company to pay the defunct entity's contributions and wait for a refund. The true-up is calculated in accordance with Commission rules using the average of the two highest or lowest quarterly factors, depending on whether revenue was over-reported or under-reported during the prior year.

Problems may arise, however, in merger situations when USAC is not provided with notice and supporting documentation of the transaction.[338] Without knowledge of a merger, USAC will continue to bill the merged entities separately and, in the event that the defunct entity stops filing FCC Form 499s, USAC will estimate revenue and continue to bill that entity. Assuming USAC is ultimately informed of the merger or otherwise learns of it, billings for the defunct entity will be reversed and the surviving entity, depending on whether it correctly reported the combined revenue of the merged entities, may need to file revised FCC Form 499s thus triggering revised USF obligations.

In paragraph 65 of the *NPRM*, the Commission sought comment on whether to modify the current contribution process. Although not directly related to contributions, BellSouth observed that reporting actual revenue from the prior quarter on FCC Form 499-Q was unnecessary and burdensome.[339] Because contribution obligations are currently based on projected revenue, USAC does not use actual revenue reported on the FCC Form 499-Q for the prior quarter for USF billing purposes.

[338] USAC Comments at 69-70.

[339] BellSouth Comments at 17.

B. Oversight of the USF

1. Independent Audits

a. Schools and Libraries Program Beneficiary Audits

(i) Independent Audit Requirement

The majority of commenters do not support requiring Schools and Libraries program beneficiaries to obtain an independent audit to evaluate program compliance, particularly if schools and libraries are required to pay for the audits.[340] Some commenters note that using USF funds for an expanded audit program would take away support funds from beneficiaries.[341] Other commenters suggest that the Commission wait for the results of USAC's Site Visit Initiative before implementing new audit requirements.[342] With respect to the need for additional audits, many commenters suggest the Commission take into consideration the many audits that participants in the program already undergo in the normal course of business as the Commission assesses its approach to the audit program.[343] With respect to a dollar threshold trigger for an

[340] *NPRM*, ¶ 71-73. *See* AEWG Comments at 12; CPS Comments at 24; Great City Schools Comments at 10; CCSSO Comments at 8; EdLinc Comments at 19; ISTE/CoSN Comments at 17-8; Kellogg & Sovereign Comments at 17-19; NASTD Comments at 9; NREA Coalition Comments at 4-5; PSTC Comments at 5; SECA Comments at 67-68; WVDE Comments at 9. *But see* Miami-Dade Comments at 21-22 (applicants should be audited twice every five years and should pay for audits).

[341] *See* AASA/AESA Comments at 15; EdLinc Comments at 20; Comments of the American Association of Independent Auditors at 16.

[342] *See* CCSSO Comments at 8; ESPF Comments at 19-20; Kellogg & Sovereign Consulting at 18; SECA Comments at 68.

[343] *See* Alaska Comments at 8-9; AASA/AESA Comments at 15-16; BellSouth Comments at 10; California DOE Comments at 15; CPS Comments at 24; EdLinc Comments at 20; Miami-Dade Comments at 21; LAUSD Comments at 5; Comments of American Association of Independent Auditors at 16; SECA Comments at 67-68; WVDE Comments at 8-9.

independent audit requirement, some commenters support thresholds as well as other types of triggers for audits[344] while others oppose them.[345]

USAC commented that an independent audit requirement could be useful, but it should not replace USAC's beneficiary audit program.[346] USAC reiterates those comments here. USAC also stated that establishing firm audit thresholds could create negative consequences.[347] Some commenters agree, and USAC reiterates that it should retain flexibility and discretion to administer an audit program in consultation with the Commission and to devise audit plans each year based on its assessment of program risk factors.[348]

With respect to the suggestion by some commenters that USAC rely on audits or reviews conducted by other entities, Generally Accepted Government Auditing Standards (GAGAS) requires auditors to consider the results of prior audits to determine if significant findings and recommendations that directly relate to the subject matter of the GAGAS audit exist.[349] The primary purpose of USAC's audit program is to ensure compliance with Commission rules and requirements. Additional purposes include preventing and detecting USF waste, fraud, and abuse. Because not all audits conducted

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[344] *See* ALA Comments at 34; AEWG Comments at 12; Great City Schools Comments at 10; NASTD Comments at 9-10; NEILSA Comments at 8; On-Tech Comments at 9; Wisconsin Dep't of Public Instruction Comments at 10.

[345] *See* Sprint Nextel Comments at 15-6; Verizon Comments at 23-4; Kellogg & Sovereign Comments at 17-18; NASTD Comments at 9.

[346] USAC Comments at 203-04.

[347] *Id*.

[348] *Id*.

[349] U.S. GEN. ACCOUNTING OFFICE, GOVERNMENT AUDITING STANDARDS, GAO 03-673G (2003 Revision) (GAGAS).

by other entities have the same purpose, the scope (i.e., nature, timing and extents of tests) of an audit conducted by another entity—even another government agency—may not match the scope of an audit required to test and determine USF compliance. Therefore, relying on audits conducted by other entities would not accomplish USAC's audit objectives, nor would it provide an overall assessment of program compliance. While obtaining audits conducted by other entities will provide a greater understanding of the auditee's environment, such audits are not an appropriate substitute for USAC audits conducted pursuant to GAGAS.

(ii) Scope and Methodology of Independent Audit

In response to the Commission's request for comment on the scope and methodology of a proposed annual independent audit,[350] parties state that audit findings and recoveries should be based on the rules in place at the time,[351] and that USAC administrative procedures should not be included in audits, or if they are, they should not form the basis for findings.[352]

USAC does not base findings on rules that were not in effect during the relevant time period. If a program beneficiary believes that a finding resulting in a commitment adjustment or recovery is not based on a rule in effect at the time, the beneficiary can appeal USAC's commitment adjustment or recovery consistent with the Commission's

[350] *NPRM*, ¶¶ 74-75.

[351] *See* AASA/AESA Comments at 16; CCSSO Comments at 8; CPS Comments at 25; EdLinc Comments at 20; PSTC Comments at 5; SECA Comments at 72-74; Verizon Comments at 20.

[352] *See* AEWG Comments at 12-13; Great City Schools Comments at 11; Kellogg & Sovereign Comments at 19; NASTD Comments at 10.

rules.[353] As a result of the Commission's rulemaking proceedings over the past several years, there have been fewer instances where issues discovered in audits are not addressed in the Commission's rules.

An auditee's compliance with USAC's administrative procedures is included in USAC's audit program to assist in identifying program and administrative weaknesses.[354] USAC does not seek recovery of funds based on lack of compliance with USAC administrative procedures.[355]

A. Ministerial Error v. Fraud

Commenters generally agree that USAC should attempt to distinguish between intentional fraud, negligence, and ministerial errors in conducting audits.[356] USAC employs a working definition of this distinction when it determines auditee compliance, but since repeated instances of ministerial error can indicate the need for better internal controls, USAC bases audit findings on ministerial error as appropriate and continues to support seeking recovery of funds for ministerial errors.[357] USAC also notes that while every attempt is made to make this distinction within the context of an audit, constructing a detailed definition of ministerial error applicable to all circumstances could make reaching audit conclusions difficult.

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[353] *See* 47 C.F.R. §§ 54.722-25.

[354] USAC Comments at 209-10.

[355] *Id.* at 210.

[356] *NPRM,* ¶ 74. *See* AASA/AESA Comments at 15; AEWG Comments at 13; Alaska Comments at 8; CCSSO Comments at 7-8; EdLinc Comments at 5, 19; Great City Schools Comments at 11; ISTE/CoSN Comments at 27-28; Miami-Dade Comments at 20-21; PSTC Comments at 5; Qwest Comments at 36-37.

[357] USAC Comments at 208.

B. Audit Process

Numerous parties discuss audit process issues,[358] stating among other things that the audits are burdensome,[359] service providers should receive notice of pending audits,[360] beneficiaries should be able to respond to audit findings before the final reports are issued,[361] there should be a process to contest audit findings,[362] auditors should be better trained,[363] audits should not be conducted until the project being audited has been completed,[364] and reports should be provided in a timely manner.[365] One commenter suggested USAC provide the beneficiary with a timeline for the audit process.[366] Some commenters state that audits should not be scheduled at rush times such as near application filing windows and invoicing deadlines.[367] Similarly, some auditees assert

[358] *NPRM*, ¶¶ 74, 75.

[359] *See* California DOE Comments at 15; LAUSD Comments at 5.

[360] *See* BellSouth Comments at 9; ESPF Comments at 20; Kellogg & Sovereign Comments at 19; Verizon Comments at 23.

[361] *See* CCSSO Comments at 8; Great City Schools Comments at 11; PSTC Comments at 5; SECA Comments at 70-71.

[362] *See* CPS Comments at 25; ESPF Comments at 20; SECA Comments at 68-71.

[363] *See* AASA/AESA Comments at 16; California DOE Comments at 15-16; CCSSO Comments at 8; NYCDOE Comments at 8-9; Qwest Comments at 37. *But see* Kellogg & Sovereign Comments at 19 (noting that it represented a large school district during an audit in 2005 and that the audit process was thorough, effectively assessed compliance with program rules, and the "auditors were properly trained and used their time and resources efficiently and effectively").

[364] *See* California DOE Comments at 15; LAUSD Comments at 5.

[365] *See* CCSSO Comments at 8; CPS Comments at 25; EdLinc Comments at 20; Great City Schools Comments at 11.

[366] *See* Great City Schools Comments at 11.

[367] *See* AASA/AESA Comments at 16; AEWG Comments at 12; EdLinc Comments at 20; NASTD Comments at 10.

that applicants should not be subject to audit while undergoing review for program compliance.[368]

USAC notes that all beneficiary audits are conducted following GAGAS as required by Commission regulations.[369] GAGAS requires each auditor to satisfy general standards of GAGAS and specific standards for each audit. The general standards cover areas such as training, educational requirements, and exercising due professional care. Each audit consists of a planning, fieldwork, and post-audit phase. The many GAGAS requirements may lead some beneficiaries to conclude that auditors are auditing beyond program requirements. This is not the case.

As part of USAC's efforts to expand communications with stakeholders, it has made several presentations in recent months to USF stakeholders about its audit process. USAC has also provided additional information regarding audits on its website which describe the process from beginning to end.

Following is a summary of the audit process:

Planning Phase. Auditors gather information about the entity to be audited to assist the auditor in performing a risk assessment and determining the level of procedures to be performed. Before USAC executes any audits, USAC ensures the auditors are properly trained. Each auditor undergoes extensive training classes. USAC attempts to coordinate timing to the fullest extent possible with beneficiaries. USAC has been able to accommodate most requests to change audit dates. USAC plans to add to its audit

[368] *See* California DOE Comments at 10; CCSSO Comments at 13; LAUSD Comments at 5-6.

[369] *See* 47 C.F.R. § 54.702(n).

procedure a requirement that the relevant service provider(s) be contacted for beneficiary audits.

Fieldwork. During fieldwork, the auditor executes the audit procedures. Auditors consider the entity's internal controls, assess whether there are indicia of fraud, obtain documents to support audit conclusions, and advise the auditee of potential findings. At the completion of fieldwork, USAC auditors review and discuss each audit finding with the auditee.

Post-Fieldwork. USAC auditors review the file to ensure workpapers are properly documented and the conclusions are properly supported. For any exceptions noted, a Detail Exception Worksheet (DEW) is prepared and sent to the auditee for comment. The DEW contains background information, the audit step performed, the exception noted and the basis for the exception. Auditees are provided with an opportunity to respond to any exceptions and are expected to respond in writing. If the auditor concurs with the auditee's explanation, the exception may be reconsidered. If the exception remains, the DEW and the response are forwarded to USAC management for review. USAC management also prepares a response to address the exception and note any corrective action. The auditee's and USAC management's responses are incorporated into the draft report and submitted to the USAC Board of Directors or an appropriate Board committee to be accepted as final. Once finalized, both the auditee and the Commission receive copies of the audit report and it may be made available to any interested party upon request.

USAC provides audit reports to beneficiaries within 30 days of approval by the USAC Board of Directors.[370] The perception that auditees do not receive audit reports may be due to the lag time between the end of fieldwork and the adoption of the final audit report by the USAC Board of Directors. In the future, USAC plans to provide auditees with more information concerning expected time frames for events associated with an audit so that auditees will know when to expect the final audit report.

b. Structure of Rural Health Care, Low Income, and High Cost Beneficiary Audit Program; Independent Audit Requirement for Rural Health Care, Low Income, and High Cost Program Beneficiaries; USF Contributor Audits

The Commission sought comment on whether the current audit structure for the Rural Health Care, Low Income, and High Cost programs, as well as for USF contributors, is appropriate and solicited input on how the auditing process for those programs can be improved.[371] Commenters generally agree that USAC should pay for any mandated independent audits required,[372] audits should be triggered by a variety of criteria other than dollar thresholds,[373] any audit program should not overly burden

[370] USAC Comments at 212.

[371] *NPRM*, ¶¶ 76-78, 80.

[372] *See* BellSouth Comments at 21 (USAC should pay for audits, but if the audit finds fraud or misconduct, the entity audited could be required to pay for the audit); CTIA Comments at 16-17; Dobson Cellular Comments at 18 (carriers could be required to pay if waste, fraud, or abuse is discovered); IDT Comments at 11-12; OPASTCO/WTA Comments at 8 (auditee could be required to pay "if intentional misconduct is found."); Qwest Comments at 37-38.

[373] *See* BellSouth Comments at 21; Dobson Cellular Comments at 14; GCI Comments at 32-33; GVNW Comments at 16-17; NECA Comments at 27-28; NTCA Comments at 6; OPATSCO/WTA Comments at 5-8, 10; Qwest Comments at 37-38; USTA Comments at 3-4. *But see* CTIA Comments at 16 (auditees should be selected based on objective criteria such as changes in support amounts requested or a threshold amount of support).

participants,[374] the Commission should consider that many entities undergo numerous other audits,[375] there should be a process for commenting on findings prior to the final report,[376] and participants should be provided with reports in a timely manner.[377] Qwest suggests that USAC "publish an annual report providing anonymous, aggregated data on audit results."[378] Other commenters state that USAC administrative procedures should not be included in audits, or if they are, they should not form the basis for findings.[379] Commenters also support a more transparent audit process "including published audit guidelines, specific, published guidance from the Commission, and time limitations on the completion of audits."[380] Some commenters oppose an independent audit requirement or suggest the Commission determine whether such a requirement is necessary as a result of widespread non-compliance.[381]

USAC addressed these comments above in connection with the Schools and Libraries program.[382] USAC reiterates here, however, that GAGAS requires auditors to consider, but not rely upon, audits or reviews performed by other entities for other purposes. Additionally, USAC believes providing results of audits in the form of

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[374] *See* BellSouth Comments at 18-19; Dobson Cellular Comments at 18; Qwest Comments at 37-38.

[375] *See* BellSouth Comments at 20-21; GVNW Comments at 16; NECA Comments at 27-28; NTCA Comments at 6; OPASTCO/WTA Comments at 4-5; USTA Comments at 3-4.

[376] NECA Comments at 29.

[377] BellSouth Comments at 19.

[378] Qwest Comments at 35.

[379] BellSouth Comments at 20; USTA Comments at 6.

[380] IDT Comments at 9-10; *see also* Dobson Comments at 14-17; Qwest Comments at 35.

[381] OPATSCO/WTA Comments at 3-4, 10; GVNW Comments at 17. *But see* Alexicon Comments at 16 (supporting increased audit activities); Qwest Comments at 38.

[382] *See* above at 85-89.

periodic reports may be useful to USF contributors and recipients. This information can be another vehicle for USAC to use as outreach and education on compliance with the USF. It may also be helpful in the same report to describe some "best" and "worst" practices.

USTA comments that standardized audits for Low Income program recipients would impose an unnecessary administrative burden on entities being audited.[383] Because USAC does not perform calculations of Low Income support, but rather relies on the data submitted by the companies, there is no way to determine whether a company's support claim is accurate other than auditing the records on which the claim is based.[384] Low Income beneficiary audits have uncovered numerous examples of misunderstandings of the rules that resulted in companies over-claiming Low Income support. Low Income audit findings should not be limited to a certain time period. If a Low Income beneficiary audit reveals that the company has made a mistake in filing its support claim, USAC finds that the company has almost always repeated the same mistake each month. Therefore, support claimed based on an error or misunderstanding of the Commission's rules should be recovered from the first time the mistake was made.

[383] USTA Comments at 3-4.

[384] USAC Comments at 215-16.

c. Application of the Single Audit Act to USF Audits

Some commenters support modeling an independent audit requirement on the Single Audit Act and OMB's implementing guidelines,[385] and suggest that the Commission would be able to rely on the results of those audits.[386] One commenter states that the Single Audit Act should not be triggered for entities that participate in the program.[387] USAC commented that it did not believe that this model translated particularly well to the USF context.[388] In the Schools and Libraries program, for example, there is no guarantee that USF funds would be included in any audit sample of a beneficiary because the sample is a discretionary selection of major programs at each institution.[389] Additionally, for USAC to be able to rely on audit work performed by others, USAC is required to perform various tests on such work. GAGAS contains requirements that auditors must follow before they can rely on work done by entities that may or may not be government auditors. USAC is currently performing an audit of 100 schools and libraries beneficiaries with the FCC OIG and both USAC and the OIG are performing the necessary procedures to ensure the work can be relied upon.

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[385] Single Audit Act of 1984, Pub. L. 98-502, and the Single Audit Act Amendments of 1996, Pub. L. 104-56. OMB has promulgated detailed requirements for audits of states, local governments, and non-profit organizations pursuant to the Single Audit Act. *See* OMB Circular A-133; *NPRM,* ¶ 81.

[386] *See* Alexicon Comments at 16; FCC OIG Comments at 6-7 (noting that among the benefits of Single Audit Act coverage is an "increased amount of audit work, much of which is already being conducted, that the FCC may be able to reply on for oversight"); NEILSA Comments at 8; Wisconsin Dep't of Public Instruction Comments at 10.

[387] PSTC Comments at 5.

[388] USAC Comments at 223-24.

[389] *Id.*

d. Failure to Comply with Audit Requirements and Address Audit Findings

The Commission sought comment on whether it should adopt rules requiring audited entities to prepare and submit plans for corrective action addressing audit findings.[390] Commenters agree that there should be appropriate follow up for non-compliant auditees.[391] Commenters also recommend higher scrutiny of such participants and some suggest USAC track non-compliance issues to determine commonalities.[392] USAC commented that it believed requiring USF recipients to provide a plan for corrective action is necessary and noted that such plans will vary by program.[393] USAC described its follow-up process for non-compliant auditees in the Schools and Libraries program.[394] In addition, USAC has implemented post-audit procedures to ensure audit findings have been addressed in an appropriate manner. USAC seeks recovery of funds when findings involve violations of program rules. On a semi-annual basis, USAC auditors follow-up with USAC management to determine if funds have been recovered.

2. Document Retention Requirements

In the *Schools and Libraries Fifth Order,* the Commission concluded recordkeeping requirements not only prevent waste, fraud, and abuse, but also protect

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[390] *NPRM,* ¶ 81.

[391] AEWG Comments at 12-13; California DOE Comments at 14; CCSSO Comments at 9; Great City Schools Comments at 12; LAUSD Comments at 5.

[392] *See* AEWG Comments at 13; CCSSO Comments at 9; LAUSD Comments at 6.

[393] USAC Comments at 225.

[394] *Id.* at 226.

applicants and service providers in the event of disputes.[395] The Commission required participants to retain all records related to the application for and receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular funding year.[396] USAC welcomed the Commission's establishment of document retention requirements.

In response to the Commission's question whether to adopt document retention rules for other USF programs,[397] BellSouth states each program should be reviewed individually, the cost to store documents should be considered, and a uniform five year retention period for all programs should not be established.[398] USAC agrees the types of records and period of time for which records must be retained depends on the program.[399]

a. High Cost Program

GVNW Consulting comments that High Cost program beneficiaries should be required to retain documents in accordance with normal business practices (e.g., seven years for tax purposes).[400] Dobson Cellular supports a two-year record retention period.[401] USTA believes that existing document retention requirements applicable to the High Cost program are sufficient and should not be expanded.[402] USAC reiterates its

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[395] *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-339, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15823-24, ¶ 47 (2004) (*Schools and Libraries Fifth Order*).

[396] *See id*.

[397] *NPRM*, ¶ 84.

[398] BellSouth Comments at 22-23.

[399] USAC Comments at 229.

[400] GVNW Comments at 17-18.

[401] Dobson Cellular Comments at 18-19.

[402] USTA Comments at 4-5.

initial view that High Cost program beneficiaries must maintain without time limit all documentation necessary to substantiate their cost study and data submitted in support of program funds they receive.[403] In addition, USAC recommends the Commission clearly specify the information that should be retained in order to assist program beneficiaries and auditors.

b. Low Income Program

GVNW Consulting again commented that recipients of Low Income program support should be required to retain documents in accordance with normal business practices (e.g., seven years for tax purposes).[404] Dobson Cellular supports a two-year record retention period.[405] USTA believes that existing document retention requirements applicable to the Low Income program are sufficient and should not be expanded.[406] In USAC's experience, the Commission's existing three-year record retention policy is generally sufficient, but the Commission may wish to reconsider its rule concerning the retention of Lifeline customers' certifications of eligibility. Under the existing rule, ETCs in states that do not have their own programs must retain the customer's signature on a document that certifies they are eligible and the number of individuals in their household (if qualifying under the income-based criterion) for as long as the customer receives Lifeline support "or until audited by the Administrator."[407] USAC suggests

[403] USAC Comments at 229-30.

[404] GVNW Comments at 17-18.

[405]Dobson Cellular Comments at 18-19.

[406] USTA Comments at 4-5.

[407] 47 C.F.R. § 54.417(a).

removing this limitation so all ETCs are required to retain an individual customer's eligibility certification for as long as that customer receives Lifeline support.[408]

c. Rural Health Care Program

USAC proposed the Rural Health Care program track the Schools and Libraries program and require participants to retain all records related to application for and receipt and delivery of supported services for a period of five years after the last day of service delivered for a particular funding year.[409] USAC's proposed five-year retention period has already been established for the Schools and Libraries program and USAC's experience suggests adopting the same requirement is appropriate for the Rural Health Care program.[410]

3. Recovery of Funds

Commenters generally support recovery of improperly disbursed Schools and Libraries program funds but seek to define more narrowly the circumstances under which recovery is authorized. For example, On-Tech argues that in light of the Commission's equipment transfer rule, USAC should only recover the remaining value of the equipment and that USAC recover funds only when applicants are found to have deceived USAC.[411] Other commenters argue that USAC should not seek recovery of funds if the applicant provided correct information to USAC and USAC later discovered that it had improperly

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[408] USAC Comments at 230-31.

[409] *Id.* at 231-32.

[410] *Id.*

[411] On-Tech Comments at 7-9.

disbursed funds or if USAC did not catch a ministerial or clerical error.[412] Similarly, others state that USAC should only recover funds in cases of intentional error.[413] Another commenter suggests that rather than seek recovery, applicants should undergo training and be subject to supervision.[414] The Arkansas E-Rate Work Group proposes repayment over a certain period of time, and that USAC be permitted to charge interest.[415]

USAC's recovery of improperly disbursed funds is necessary in order to fulfill its fiduciary obligations to the USF and its stakeholders, subject to an appropriate *de minimis* standard. USAC welcomes clarification and guidance from the Commission regarding recovery of improperly disbursed funds in the Schools and Libraries program as well as in the High Cost, Low Income, and Rural Health Care programs. To the extent USAC would need to administer repayment plans tailored to each participant's circumstances, USAC would need to expend additional administrative resources.

Verizon states that USAC should not seek recovery when an appeal of the recovery decision is pending, and that USAC should not seek recovery from both the applicant and the service provider at the same time.[416] USAC does not seek recovery when an appeal of the recovery decision is pending either before USAC or before the Commission. In certain circumstances, USAC does seek recovery from both the

[412] California DOE Comments at 16; LAUSD Comments at 6.

[413] Great City Schools Comments at 12; Trillion Comments at 7.

[414] California DOE Comments at 16; LAUSD Comments at 6.

[415] AEWG Comments at 14.

[416] Verizon Comments at 23-25.

applicant and service provider pursuant to the *Schools and Libraries Fourth Order*[417] and Commission guidance. In such cases, USAC notifies the applicant and service provider that recovery has been sought from both and encourages them to work together to ensure the entire amount is repaid. USAC does not seek or retain duplicate recoveries.

The E-Rate Service Provider Forum states that USAC should seek recovery "only after a disbursement has been clearly demonstrated to have been inconsistent with clearly publicized FCC rules and only after the party believed to be at fault has had an opportunity at an administrative hearing to rebut the charge."[418] Requiring an administrative hearing before recovering funds would impose significant burdens on USAC. The current appeal process found in the regulations provides the opportunity for affected parties to seek review of USAC decisions.

4. Measures to Deter Waste, Fraud, and Abuse

a. Schools and Libraries Per-Entity Funding Cap

USAC commented that its experience did not suggest that a per-entity cap in the Schools and Libraries program would help achieve the goal of deterring waste, fraud, and abuse.[419] USAC noted that two recently enacted Commission rules—the rule limiting eligibility for internal connections support to twice every five years, and the rule prohibiting the transfer of equipment for three years after purchase—have addressed the

[417] *See Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45, 97-21, 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15257, ¶ 15 (2004) (*Schools and Libraries Fourth Order*).

[418] ESPF Comments at 20-21; s*ee also* California DOE Comments at 16; LAUSD Comments at 6.

[419] USAC Comments at 242; *see NPRM*, ¶ 90.

primary issues that the cap seeks to address.[420] Most commenters agree and oppose caps.[421]

b. Publication of Best Practices

USAC currently provides information on "best practices"[422] to program participants and USF contributors on its website, in training sessions, and in written materials provided to applicants. USAC intends to continue and expand these efforts.[423] Publicizing best practices is helpful to program participants and USAC will continue to provide information on its website, in its weekly Schools and Libraries News Brief, and in outreach sessions. Similarly, publicizing practices not recommended can provide valuable tips to applicants and service providers who want to avoid denials. Many commenters agree that USAC should expand the best practices information it provides.[424] Other commenters suggest that the Commission define what it means by "best practices" prior to launching any new initiatives.[425]

c. Addressing "Gold Plating"

The variety of comments received on the question whether the Commission should adopt rules to prevent waste of USF support by applicants seeking to "gold plate"

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[420] USAC Comments at 242.

[421] *See* AASA/AESA Comments at 17; AEWG Comments at 11-12; Alaska Comments at 9; California DOE Comments at 17; CPS Comments at 26; EdLinc Comments at 20-21; ESPF Comments at 22; Great City Schools Comments at 5; Kellogg & Sovereign Comments at 20; LAUSD Comments at 6; NASTD Comments at 8; PSTC Comments at 5.

[422] *See NPRM*, ¶ 90.

[423] USAC Comments at 244.

[424] *See* AEWG Comments at 6; ESPF Comments at 25; Great City Schools Comments at 11; Kellogg & Sovereign Comments at 20; NASTD Comments at 4; PSTC Comments at 5; Weisiger Comments at 19.

[425] *See* California DOE Comments at 17; EdLinc Comments at 21, 24.

their networks with services or equipment beyond what they reasonably need or can use illustrates the difficulties inherent in addressing the issue.[426] One commenter suggests a "measure of reasonableness be established for internal connections equipment," and as an example states that $400,000 for a server for a school with under 1,000 students would not pass this test.[427] Others observe that the amount of funding requested is not always an indication of overbuying because the total or per-student cost to provide service depends upon the location of the applicant and the type of service.[428] Another commenter recommends that the Commission create "standards for implementation based on a range of needs," and use "common sense" to eliminate gold plating.[429] One commenter notes that in the *Schools and Libraries Fifth Order*, the Commission directed USAC to evaluate applications based on "economic reasonableness" but did not provide guidance on what the Commission considered to be "economically reasonable."[430] One commenter states that an applicant should be able to receive what was requested in its technology plan unless the funding request appears to be excessive.[431] In that event, USAC should review the applicant's funding request history to determine if the request should receive more scrutiny.[432] Another commenter states that these types of abuses occur because applicants are not required to justify the capacity they request nor does

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[426] *NPRM,* ¶ 90.

[427] Kellogg & Sovereign Comments at 20-21.

[428] *See* AEWG Comments at 11-12; NASTD Comments at 8-9.

[429] California DOE Comments at 17; *see also* LAUSD Comments at 3.

[430] Weisiger Comments at 5-6, 19.

[431] AEWG Comments at 11-12.

[432] *Id.*

USAC test the relationship between the capacity for which the applicant is seeking funding and the planned applications of that technology.[433] This commenter suggests USAC test whether the funding request is appropriate or whether it is over-engineered.[434] One commenter suggests developing standards for ranges of service for access and bandwidth infrastructure, and applicants who seek funding outside of these ranges would need to demonstrate their need for it.[435]

USAC denies funding requests that are inconsistent with the Commission's rules. Under current rules, however, if the request comports with the applicant's technology plan, the applicant has the necessary resources to make effective use of the funds, and the applicant followed rules with respect to vendor selection, USAC's authority to deny the request because it is deemed to be "excessive" is limited.[436] USAC supports establishing detailed standards concerning what constitutes gold plating so that USAC can deny funding requests squarely on those grounds.[437] USAC notes that the types of suggestions put forth by commenters, if adopted by the Commission, would require USAC to revise its procedures significantly. Additionally, USAC would need to modify systems to support any new rules and would need to devise an appropriate education and outreach program for participants.

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[433] Avaya Comments at 7.

[434] Avaya Comments at 8.

[435] California DOE Comments at 6, 17.

[436] USAC Comments at 246.

[437] *Id.* at 245.

The Commission also sought comment on whether it should set maximum prices for particular services or equipment.[438] Commenters addressing this issue opposed this suggestion, some noting that there is a wide range of costs depending upon geographical location, availability, demand, and the like.[439] Two commenters observe that if the Commission set a maximum price, service providers would simply charge that maximum price.[440] USAC raised similar concerns in its Comments and noted in its experience service providers are reluctant to provide pricing data with submissions of product information for USAC's Eligible Products Database.[441]

d. Heightened Scrutiny for Previous Rule Violators

The Commission sought comment on whether it should adopt specific rules governing higher scrutiny for previous rule violators, and what requirements, if any, should apply to the conduct of heightened review of program participants.[442] Commenters generally support heightened scrutiny of previous rule violators and suggest various ways in which the heightened scrutiny should be applied.[443]

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[438] *NPRM*, ¶ 90.

[439] *See* AASA/AESA Comments at 18; CPS Comments at 27; EdLinc Comments at 22; NASTD Comments at 8-9.

[440] *See* Alaska Comments at 10; AEWG Comments at 12.

[441] USAC Comments at 247.

[442] *NPRM*, ¶ 91.

[443] CCSSO Comments at 9 (rule violators should have to provide reports and meet performance goals); Council of the Great City Schools Comments at 12 (supporting "appropriate oversight and tighter scrutiny" for participants who are not compliant with program rules, and proposing additional training for such participants along with penalties before debarment is appropriate); ESPF Comments at 23 (USAC should "set a high threshold for heightened scrutiny and advise affected applicants and service providers that it will be applied and provide them with an opportunity to satisfy the administrator that they are in compliance with all applicable rules"); ISTE/CoSN Comments at 18; Kellogg & Sovereign Comments at 21 (such participants should have to undergo an annual audit and review of all invoices).

USAC's approach is to review funding requests by applicants that fail heightened scrutiny reviews in any funding year with another heightened scrutiny review in the subsequent funding year.[444] USAC also conducts follow-up work with participants determined to be non-compliant after an audit.[445] In conducting heightened scrutiny reviews, USAC should continue to request information in a clear manner, set firm deadlines, and upon its receipt process the application on a timely basis without repeated requests for information.[446] As the entity entrusted with protecting the USF, USAC believes it is critical to take action necessary to ensure program compliance. As USAC has gained experience in each year of its program administration it has sought to address these serious issues and add targeted measures to ensure that funding decisions are made in compliance with program rules without—to the extent possible—sacrificing administrative efficiency and speed.

e. Suspending Payments to Suspected Rule Violators

The Commission requested comment on whether it should adopt rules or guidelines governing when USAC should stop payments or application processing as a result of suspected program violations.[447] USAC commented that as a general matter, it denies funding requests and payments once it determines that the funding or payment request is inconsistent with program rules.[448] USAC does not issue a decision on funding

[444] USAC Comments at 248.

[445] *Id.*

[446] *Id.*

[447] *NPRM*, ¶ 91.

[448] USAC Comments at 249.

requests associated with non-compliant auditees until the auditee adequately addresses the reasons for the non-compliance.[449] Finally, USAC follows principles developed in consultation with Commission staff for dealing with participants under law enforcement investigation.[450]

Commenters differ on this issue. One commenter states that payments to service providers who are being investigated or who owe recoveries to the USF should be suspended[451] while another states that the Commission should review "its current policy of funding suspensions based merely on allegations imparted on an applicant by a vendor" and suggests that program forms include a statement of the procedures USAC follows when it receives allegations of program rule violations.[452] Another commenter states that payments should be stopped only if a participant is guilty of fraud, and not as a result of suspected rule violations.[453] Another Commenter supports stopping payments once there is a finding of non-compliance.[454] Another commenter states that USAC should not be allowed to withhold funding to all customers of a service provider during an on-going investigation, arguing that only those entities affected by the investigation should have funding withheld.[455] USAC's current administrative practices comport with

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[449] *Id.* at 226.

[450] *Id.* at 249-50.

[451] Kellogg & Sovereign Comments at 21.

[452] Miami-Dade Comments at 24.

[453] CPS Comments at 28.

[454] Great City Schools Comments at 12.

[455] Verizon Comments at 23.

Commission rules and guidance and USAC's experience suggests that this current practice should be maintained.

f. Measures to Prevent Waste, Fraud, and Abuse in the High Cost, Low Income, and Rural Health Care Programs

The Commission received numerous comments in response to its questions concerning ways to prevent, detect, and deter waste, fraud, and abuse in the High Cost, Low Income, and Rural Health Care programs. [456]

(i) High Cost Program

Commenters, including USAC, support the suggestion that USAC should publicize "best practices" for program participants. BellSouth commented that a "best practices working group," should be established similar to the Low Income program's "Lifeline Across America" initiative, holding periodic focus groups with stakeholders, implementing a change management process (to give stakeholders advance notice of changes) and posting on the USAC website contacts for the program.[457] USAC will evaluate these recommendations. NECA recommended that the Commission establish an advisory council to assist USAC in identifying and resolving process issues relating to the High Cost program.[458]

To increase High Cost program efficiency, USAC works with program beneficiaries to develop and publish "best practices" that enable them to provide accurate data in a timely manner and to understand the consequences of not meeting deadlines or

[456] *NPRM,* ¶¶ 92-94.

[457] BellSouth Comments at 3-6.

[458] NECA Comments at 16.

following Commission rules. Through education and outreach, USAC can communicate High Cost program "best practices" to carriers, which will benefit both the participants and the USF in general, increase operational efficiencies, and potentially reduce administrative costs.

USAC communicates regularly with companies by sending e-mails announcing important changes or deadlines, posting information on its web site, and attending industry conferences. When a significant change in the rules or a new form is established, USAC posts the information to its web site and holds training sessions for companies, as it did when the Commission approved the new competitor line count form (FCC Form 525). In addition, USAC regularly meets with companies to discuss program issues.

(ii) Low Income Program

Alexicon and Qwest commented that existing forms and rules are sufficient to deter waste, fraud, and abuse in the Low Income program.[459] USAC, however, recommends certain administrative changes. In addition to the changes to FCC Form 497[460] suggested by USAC,[461] USAC recommended that several issues in the Commission's rules be addressed.[462] For example, the Commission should consider making the amount of tribal Link-Up support contingent on a company's costs or impose limitations on the rates a company can establish for Lifeline and Link-Up customers.

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[459] Alexicon Comments at 14; Qwest Comments at 40-41.

[460] *See* Lifeline and Link-Up Worksheet, OMB 3060-0819 (October 2000) (FCC Form 497).

[461] *See* USAC Comments at 170.

[462] *Id.* at 253-55.

Under the current rule, a tribal Link-Up consumer pays only $30 per month regardless of support claimed by an ETC. However, some ETCs are claiming the maximum of $100 per month in tribal Link-Up support regardless of their actual costs. Verizon raises the possibility that providers of pre-paid service could also qualify for an amount of Lifeline support that exceeds their costs.[463] USAC encourages the Commission to examine these scenarios and ensure that its rules do not permit ETCs to profit from the Low Income program. USAC also reiterates that the Commission should preclude ETCs from requiring that their Lifeline customers accept Toll Limitation Service. At least one ETC does not permit its Lifeline customers to place long distance calls. Mandating toll limitation service limits consumers' choices, inflates the amount of Toll Limitation Service Support disbursed from the fund, and suppresses the contribution base by limiting the interstate revenues of companies that impose this restriction.

USAC communicates regularly with companies by sending e-mails announcing important changes or deadlines, posting information on its website, and attending industry conferences. When a significant change in the rules or a form occurs, USAC sends notices to every ETC and has held training sessions for companies, as it did when the Commission developed a new version of FCC Form 497. USAC regularly meets with companies and responds to their issues. There may be a misunderstanding, however, among some companies about USAC's role in establishing new policies and forms. USAC does not make policy decisions, but rather implements the decisions made by the

[463] Verizon Comments at 28-29.

Commission, including issuing new program forms.[464] As it did regarding the High Cost program, BellSouth proposed that USAC consider establishing a "best practices working group," holding periodic focus groups with stakeholders, implementing a change management process (to give stakeholders advance notice of changes) and posting on the USAC website contacts for the program.[465] The Commission has recently created a Joint Working Group on Lifeline and Link-Up Services that will focus on best practices and outreach materials for the Low Income program.[466] USAC looks forward to working with this group.

(iii)Rural Health Care Program

Rural Health Care program commenters recognize that waste, fraud, and abuse is relatively rare in the program, making additional rules or a per-applicant cap unwarranted at this time.[467]

5. Other Actions to Reduce Waste, Fraud, and Abuse

a. Adoption of New Rules Regarding Waste, Fraud, and Abuse

Commenters had a variety of responses to the Commission's question whether it should adopt a rule "specifically prohibiting recipients from using funds in a wasteful, fraudulent or abusive manner" in order to further protect the universal service support

[464] *See* 47 C.F.R. § 702(c) ("The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.").

[465] BellSouth Comments at 3-6.

[466] *See* Public Notice, DA 05-2539, FCC Announces Members of Joint Working Group on Lifeline and Link-Up Services (rel. Sep. 28, 2005).

[467] *See* Qwest Comments at 41; USAC Comments at 173, 256; *see also NPRM*, ¶ 94.

programs.[468] USAC understood the Commission to be proposing a catch-all rule that, among other things, could form the basis for denying funding requests and stated that such a general rule would allow USAC and the Commission to reach beneficiaries who may be exploiting unanticipated loopholes even though they might not be violating a specific program rule.[469] Some commenters support this type of rule,[470] while others question whether it is necessary.[471]

b. Suspension and Debarment Rules

(i) Schools and Libraries Program Debarment Process

Commenters had a variety of responses to the Commission's questions regarding the Schools and Libraries program debarment process.[472] The general theme of these comments echoed those of the Commission and USAC in supporting strengthening the procedures.[473] Many commenters support USAC providing a list of debarred entities

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[468] *NPRM,* ¶ 95.

[469] USAC Comments at 257-58.

[470] CPS Comments at 28; Kellogg & Sovereign Comments at 21.

[471] *See* AASA/ASEA Comments at 17-18; ISTE/CoSN Comments at 17.

[472] *NPRM,* ¶ 97.

[473] *See* AASA/AESA Comments at 19 (debarment rules should prevent vendors from being able to evade the effect of debarment by moving to another state, school or school district should not be debarred based on the program rule violations or fraud by a single staff person, but suggests that if the rule violations occurred over multiple years, it could be appropriate to take action against the entity as a whole); EdLinc Comments at 22-23 (the proposed federal suspension and debarment regulations should not be adopted because to the extent the program is classified as a federal program, this could adversely affect private applicants); ESPF Comments at 24 (agreeing with the Commission's tentative conclusion to strengthen debarment, but proposing the Commission initiate a separate rulemaking proceeding); Kellogg & Sovereign Comments at 22 (the Commission "should establish more aggressive sanctions and debarment procedures and disclosures").

and information about the reason for the debarment.[474] USAC currently maintains a list of suspended and debarred entities in a prominent location on its website.[475] This list contains links to the Commission's notices of suspension and debarment, and these notices contain detailed information about the causes for debarment.

Some commenters state that USAC should not inform applicants when their selected service provider is under investigation,[476] while another recommended that USAC do so.[477] In an effort to promote program transparency to the fullest extent possible, USAC commented that with respect to investigations resulting from USAC's internal review processes and whistleblower calls, USAC is implementing a process to send notification letters to entities being investigated.[478] USAC also stated that it already notifies entities when it has concluded an investigation.[479] However, to the extent USAC becomes aware of a confidential law enforcement or other investigation, it cannot divulge that information.[480]

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[474] *See* CPS Comments at 28; EdLinc Comments at 22-4; Kellogg & Sovereign Comments at 22.

[475] USAC Comments at 261-62.

[476] *See* ESPF Comments at 24 ("[d]o not publicize the names of those under investigation or require waiver of the right to confidentiality"); FCC OIG Comments at 8 ("[a]s a general rule, we believe this would not be advisable as it may have a negative impact on an investigative matter, and we would recommend consultation with the applicable law enforcement agency in advance of sharing any information outside of the investigative/government parties"); Kellogg & Sovereign Comments at 22.

[477] *See* California DOE Comments at 14.

[478] USAC Comments at 264.

[479] *Id*.

[480] *Id*.

Some commenters suggest that there should be sanctions against willful and repeated rule violators and propose a variety of sanctions.[481] With respect to whether applicants with selected service providers who violated the rules should be able to change their service provider, a commenter suggests that applicants in this situation receive a waiver so that they can reapply during a special window.[482] Another commenter states that applicants should be allowed to change service providers prior to commitment when the service provider is found to be in violation of program rules,[483] with another noting that the Commission's debarment rules may conflict with state procurement rules and that applicants may not be able to terminate contracts with service providers after suspension by the Commission.[484] Some commenters suggest the Commission should link its debarment process to processes already in place at the state level.[485] The Commission's OIG supports "expanding the scope of the debarment process to encompass instances of clear and systematic abuse of the program" that do not necessarily rise to the level of criminal activity.[486]

USAC commented it believed that the Commission should set a lower bar for participants to be debarred from the program so that a pattern of bad behavior, not just a criminal conviction, could warrant such a sanction.[487] USAC proposed that the standard

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[481] *See* EdLinc Comments at 22-23; ISTE/CoSN Comments at 18-21; NASTD Comments at 11.

[482] Kellogg & Sovereign Comments at 22.

[483] EdLinc Comments at 23.

[484] NASTD Comments at 10-11.

[485] CPS Comments at 29.

[486] FCC OIG Comments at 8.

[487] USAC Comments at 262-63.

could be a pattern of rule violations demonstrating a substantial pattern of misconduct, and listed the types of violations that would satisfy this standard.[488] USAC reiterates its initial comments regarding the need for clear and strong triggers for debarment.

(ii) Adoption of Debarment Rules in the High Cost, Low Income, and Rural Health Care Programs

The Commission also asked whether it should adopt debarment rules applicable to the High Cost, Low Income, and Rural Health Care programs and, if so, whether such rules should be modeled on the debarment rule applicable to the Schools and Libraries program, should be program-specific, or should be modeled on the government-wide non-procurement debarment regulations.[489] The Commission also sought comment on whether it should broaden the scope of the debarment rules to encompass entities that have been found guilty of civil and criminal violations beyond those associated with the universal service programs or entities that have been shown to have engaged in a clear pattern of abuse of Commission rules.[490]

GCI believes debarment should be extended to all programs.[491] Dobson Cellular believes suspension and debarment procedures should be codified.[492] The Commission's OIG supports "applying the debarment process to all USF support mechanisms and expanding the scope of the debarment process to encompass instances of clear and

[488] *Id.* at 263.

[489] *See NPRM*, ¶ 97.

[490] *See id.*

[491] *See* GCI Comments at 36.

[492] *See* Dobson Cellular Comments at 19-20.

systemic abuse of the program."[493] USAC agrees with GCI's statement "provided that it is restricted to cases of 'intentional acts of fraud' and/or recipients that 'recklessly or negligently use funds in an inappropriate manner,' the use of debarment can allow the Commission to give service providers greater incentives to comply with the rules without increasing the audit burden on honest end users."[494] In addition, USAC reiterates its stance that the current rules in effect for the Schools and Libraries program could be expanded to cover the Rural Health Care program and "the suspension and debarment threshold should be lower than criminal conviction and civil liability."[495] As explained in USAC's comments, there is a significant cost to review applications that result in denials to applicants and applicants associated with service providers who, on a continual basis, are unable to support certifications they make.[496] If the threshold was lowered, program integrity would increase, administrative costs could be lower and applicants and service providers would have stronger incentives to understand and follow program rules.[497]

With respect to the High Cost program, GVNW Consulting believes the Commission already has sufficient debarment powers.[498] As USAC observed, the Commission or a state refusing to certify or removing the certification of a carrier is in effect a debarment from participation in the High Cost and Low Income programs, and

[493] FCC OIG Comments at 8.

[494] GCI Comments at 36 (citations omitted).

[495] USAC Comments at 268.

[496] *See id.* at 269.

[497] *See id*.

[498] *See* GVNW Comments at 19.

therefore, extending debarment rules from other universal service programs to the High Cost program is not necessarily required in order to prevent rule violators from receiving program support.[499]

(iii)Sanctions Other Than Debarment

In response to the Commission's request for comment on whether it should adopt sanctions other than debarment for violations of USF program rules,[500] some commenters propose a graduated system of sanctions tailored to the seriousness of the offense.[501] One commenter suggests the Commission establish punitive fines for bad actors.[502] USAC reiterates its initial response that a complex scheme of sanctions less than debarment could add to the complexity of the programs and increase administrative costs without meaningfully increasing program integrity.[503]

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499 *See* USAC Comments at 266-67.

500 *NPRM,* ¶ 98.

501 *See* CPS Comments at 29; EdLinc Comments at 23; Great City Schools Comments at 12; ISTE/CoSN Comments at 18-21.

502 Trillion Comments at 3, 7.

503 USAC Comments at 270.

III. CONCLUSION

USAC appreciates the opportunity to respond to the comments of the many interested parties in this proceeding. USAC stands ready to assist the Commission and to work with all USF stakeholders as this important process moves forward.

Respectfully submitted,

UNIVERSAL SERVICE
ADMINISTRATIVE COMPANY

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